

REMINISCENCES
OF A K.C.

THOMAS EDWARD CRISPE



Thos E. Crispe to Alfred Docker,
most kind regards and
best wishes

Thos E. Crispe
Nov 24. 1909.

The K. C. Reminiscences
and other papers of the author

REMINISCENCES OF A K.C.



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WELL, GENTLEMEN!

REMINISCENCES OF A K.C.

BY
THOMAS EDWARD CRISPE
OF THE MIDDLE TEMPLE

WITH TWO PORTRAITS

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WELL, GENTLEMEN ! *Frontispiece*

From a Photo of the Author by Bassano

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REMINISCENCES OF A K.C.

PART I

CHAPTER I

EARLY REMINISCENCES

I WAS born, in the "Thirties," a posthumous son of Thomas Edward Crispe, of Town Malling, a Kentishman, who traced descent from William Crispe, Mayor of Sandwich in 1536, one of the then ancient Thanet families of that name, who tacked on to the Oxford strain. The family is Norman, being the offshoot of the Crispins, whose change of name to Crispe is shown in the Pipe Rolls and Rolls of the Hundreds. *Circa* 1350 two Norman families became allied, Henry, son of William Crispe, of Stanlake, having married Matilda, daughter of Sir John Harcourt, of Stanton Harcourt, from which family came a Lord Chancellor—to whom, on his appointment in 1713, another Henry Crispe wrote a congratulatory poem, referred to in Lord Campbell's *Chancellors*—and "Plantagenet" Harcourt. The arms of the Crispes are displayed in the Middle and Inner Temple Halls—in the latter, those of Henry Crispe, Common Serjeant of London, 1678, and "Lector" in 1698. Of a score of the name who were barristers, the earliest, I find, was William Crispe, of Gray's Inn, 1529. In 1602 Sir Henry Crispe, of "Quex," Thanet, was a member of the Inner Temple, and in 1660 Sir Nicholas Crispe, Baronet, grandson

of the Loyalist, was a member of the Middle. Mr. F. A. Crisp, the genealogist, has published an interesting account of *The Family of Crispe* in four volumes. "Parturiunt montes, nascitur ridiculus mus."

My first appearance in public was as a rider in a booth. I was five years old, but neither freak nor prodigy. It was on the Coronation Day of Queen Victoria, 1838, and I saw the procession from a house opposite the Green Park. My uncle took me to the great fair in Hyde Park, given in honour of the occasion, and there introduced me to the Hottentot Venus—I have made the acquaintance of many professional ladies since then.

From a Hottentot point of view the beauty of the dusky goddess consisted in an abnormal development, and a strength which enabled her to carry a drayman round the arena without inconvenience. On this steed of Africa, I, a featherweight, was placed a-straddle, and holding to a girdle round her waist—the almost sole article of her apparel—I plied a toy whip on the flanks of my beautiful jade, who, screaming with laughter, raced me round the circle.

Of my school-days I have but little to relate, save that at the age of ten I made my second public appearance, playing the part of "Prince Arthur" in *King John*, and on another occasion in French, in Molière's *Bourgeois Gentilhomme*. I was also put up in a debate on "The Dog Bill." I took a prize in Elocution, and my name was favourably mentioned in the Kentish press, which puffed me up with a conceit I fear I have never been able to shake off. I became an ardent reader of stage plays—all my pocket-money went in books. At the time there was a weekly issue of dramatic works, to which I was a constant subscriber.

These trivialities are merely recorded as the prelude to a life of activity and publicity—to have a good knowledge of elocution, to become accustomed to an audience, and possess some dramatic style, is not bad culture for a man's career at the Bar. On leaving school I was articled to a quasi profession, to complete my training, and eventually became

what is called a scientific witness, and of my experiences before Committees of both Houses of Parliament, for and against Railway companies, School and local boards, drainage and other schemes, I shall have a word to say. I was not singular in having later on changed my occupation ; many distinguished advocates, and not a few learned judges, commenced life in a different sphere to that which they ultimately adopted.

Like many young men of the day, who had not the opportunity of completing their education by the curriculum of Alma-Mater, I joined, with the view of improving mine, a literary and scientific society, known as the Marylebone. We had our reading-room, an excellent library, and a lecture hall. The building is now Steinway Hall, and the pretty theatre is the same as it was fifty years ago. We had classrooms, with experienced French and other professors, and Hullah taught his system in the music-room. There was a debating club, at which Parry—afterwards Serjeant Parry—and also a good many other subsequently distinguished men aired their youthful eloquence. Parry lectured for us on “The Oratory of the Bar.”

Half a century before the Baconian controversy we disposed of Shakespeare as the Editor rather than the Author of the plays attributed to him. We were very courageous in our opinions. With my old love of histrionics still in the ascendant I was not content until I had started a dramatic club in connection with the society, and on our mimic stage I played many parts. I took an active interest in the affairs of the Marylebone, on the committee of which I soon became a member and vice-president. Jacob Bell, the Quaker chemist, was President,¹ an excellent man but not a rigid member of the Society of Friends ; in fact, it was said that he rode to hounds as well as a country squire, with a scarlet coat sometimes under a drab one. I do not vouch for this, but at any rate he was not a rigid Quaker.

Mr. Bell was a patron of the fine arts, and spent another

¹ It was he who founded the Pharmaceutical Society, on which he spent a fortune.

fortune in his gallery in Langham Place, which, with his numerous *soirées*, became a *salon* for the men of the day. There I had the pleasure of elbowing painters and poets, writers and critics, actors and singers, novelists, and other literary fry. Sir Edwin Landseer was one of Bell's intimate friends, Thackeray another. An early patron of Edwin Landseer, he had in his collection many works of that distinguished artist, including "Dignity and Impudence," "Shoeing," and the "Maid and the Magpie," six of the best of which, together with famous examples of O'Neil, Sidney Cooper, Charles Landseer, E. M. Ward, and W. P. Frith ("Derby Day"), were bequeathed by him to the nation, and are now in the Tate Gallery, also a replica of Rosa Bonheur's "Horse Fair."¹ He much treasured a gift from Edwin Landseer—his school slate, on which the embryo Veronese had painted, if I recollect rightly, a lion's head.

Apropos of Thackeray, I have a tale to tell. I had been working up our lecture course, and improving it by obtaining the best lecturers and entertainers of the day. In 1857 Thackeray was lecturing on the "Four Georges," and I thought it well that he should make his first appearance in London at our house. Jacob Bell placed himself in communication with him. We found the great satirist of other people's foibles a hard bargainer; one side of his character was not over-estimable, he was mean and narrow at times. Serjeant Ballantine, who knew him much better than I did, wrote, in his *Experiences of a Barrister's Life*, a far from flattering commentary:

"I never thought him an agreeable companion—he was very egotistical—greedy of flattery, and sensitive of criticism to a ridiculous degree."

It took a great deal to satisfy him, where his own interests were concerned. Years of failure; comparatively unknown, and, until he wrote *Vanity Fair*, with powers unrecognised,

¹ There was an exhibition of paintings at the Marylebone in which Bell's best paintings were exhibited, and he partly compiled the catalogue.

he was soured ; and some of his brilliant satire might well have been applied to himself. He was lecturing at the time in Edinburgh, and the wily Scot had made a good bargain. The houses were crowded—the Northerners made money, and Thackeray was furious. Bell showed me a letter of discontent from him : it was laconic. It ran :—

“DEAR BELL,—I am in the hands of the Philistines. They have bought me for two hundred, and sold me for five.

“Yours,

“W. M. THACKERAY ”

After much huckstering on the part of the author we capitulated on terms sufficiently onerous. We were to pay him £500 for four nights, with a repeat—a large sum then. But even this did not content him : he must have half our profits beyond £500. The lectures were short, well within an hour and a half—practically twelve hours' work ; the risk was great : with attendant expenses we could not get out under £700, and the seating capacity of the hall precluded a substantial profit ; but we agreed.

Shortly after the arrangement was completed our librarian, a Mr. Warren—a very able and intellectual man—said to me one day when we were getting out our announcements—

“Mr. Thackeray has been here this morning, and says he does not wish to be ‘Esquired’ in the bills. What shall I do ? ”

“Oh ! ” said I, “put him down ‘W. M. Thackeray will lecture on the Four Georges.’ ”

And so the posters, advertisements, and circulars went out in that form. I thought no more of the matter. On the first night we had a grand audience—rank and fashion, and the literary men of the day. On the platform Douglas Jerrold, the Mayhews, Alfred Crowquill ; in fact, most of those prominent in literature and art. The lecture was a brilliant success. After it, in the committee-room, we expected to find Thackeray as gratified as we were, but he was as sulky as a bear and as glum as an owl.

"What's the matter?" at last said Bell. "What's amiss?"

"Well," returned Thackeray, "I don't think your people have treated me with common courtesy. When I write a book I put on the vignette page, '*Vanity Fair*, by W. M. Thackeray,' but when I deliver a lecture——" He stopped.

"Oh!" rejoined the wily Quaker, "we should not think of saying '*Mr. William Shakespeare!*'"

The great man swallowed the gilt pill, and, thus flattered, at once became his own genial self. The funds of the Institution were enriched by about £100. Shortly afterwards, in the vanity of my youth—I was then twenty-four years old—I lectured on Thackeray himself. I suppose there was something in my lecture, as it was published by a few of my admirers as a compliment to myself. I still have a copy—it seems poor stuff now, but I said nothing of Thackeray's foibles. I fancy I made the fortune of a young pressman by it, when I gave the lecture at the Town Hall, Brighton. He interviewed me, so I gave him a print. Five columns appeared in the principal paper next day. It was considered a wonderful feat of rapid reporting. Most of the lecture was in a highfalutin' early Victorian style, as his early life summed up in a few lines indicates:—

"We see him, Thackeray the scholar, intended for the Bar, and keeping his five or six terms at Cambridge. You might have sung your song with him at a College wine party, given him odds at billiards, or steered the boat in which he pulled stroke oar, and when you were rusticated you might have seen him leaving college without a degree. You might have smoked your cigar with him in his chambers in the Temple and noted how distasteful that huge volume of *Coke upon Lyttleton* seemed to him, and shrugged your shoulders knowingly, when you heard that law had been abandoned for painting. You might have seen him in sunny Paris copying pictures in the Louvre, seated under a Paul Veronese with his easel before him—Thackeray the artist, making

more friends by his caricatures than money by his paintings. The palette is abandoned for the folio—the pencil for the pen. We note him editor of a journal which runs but a brief course. College honours blank—legal note blank—artistic fame blank—editorial success blank—another turn at the wheel and Fortune is propitious. Humour and Satire dip together in the lucky bag, the chance comes out a prize, and the breath of popularity wafts him on to fortune.”

Fond of flattery as Thackeray was, he must, when he read the following, have thought the sugar almost saccharine. However, he never gave me his opinion. The reader will note how powerful is the editorial “We.”

“We see him standing where we now address you ; we hear him, in his fine impressive voice, employing the bitterest sarcasm, as he denounces the follies of the kings who governed us—not a weakness, not a vice, not a crime escapes him—unflinchingly he lashes them with the whip of a democrat ; he destroys our love of King-worship by the scandal of Courts—the good they did is buried with their bones, and all the ill lives after them. Merciless, ironical, pitiless, he crushes them in his iron palm. Majestic in his sweeping denunciation, grand in his eloquence, he stands forth as the most fearless writer, famous exponent, and plainest speaker of the faults of the past and the errors of the present. Talented, witty, accomplished, skilled in ridicule, master of style, unequalled in satire, great writer, pleasant speaker, author and lecturer combined, he commands our respect and wins our admiration. Posterity, the great judge of men’s actions and their works, will write a name on the brightest page of the scroll of fame, emblazon it with the honours of the craft, and the name thus writ will be that of *William Makepeace Thackeray*.”

Well, for enthusiasm, if not for sense, this could scarcely be equalled ; but I was enthusiastic in those days—more than

half a century ago. The editorial "We" is lovely. However, I was a true prophet. "So much for Buckingham."

Shortly after Thackeray's Lectures, I engaged Fanny Kemble (Mrs. Butler) for her Shakespearian Readings. She was also a great success. I found her a charming woman, but much as her relative, Charles Santley, has recently described her. An air of repellent dignity seemed to dominate her, and she made one recognise that she was a person of importance. Her presence was quite Siddonian. We old staggers, perhaps, underrate the merits of the actors and actresses of to-day and make unfavourable comparison with those of the past, but my belief is that very few, if any, of the ladies now on the stage could match her. As readings, "Julius Cæsar" and "Coriolanus" were superb.

Miss Glyn, an excellent actress whom we also engaged, followed closely in the steps of the great Fanny, divided only by the narrow but well-defined line between Genius and Talent: the one must succeed, the other may—

"Talk not of Genius baffled,
Genius is master of man,
Genius must do what it must,
Talent must do—what it can."

George Grossmith, father and grandfather of the clever Georges of the day, frequently entertained us. He was a reporter at Bow Street, and no doubt reported with Charles Dickens in their younger days. In appearance he was Pickwickian. He had a great admiration for Dickens, and delighted in rendering the characters which the immortal Boz had made familiar. His Pickwick and the maiden lady, into whose room the modest philanthropist had strayed, strained people's gravity. In those times people laughed when they were amused—now they only smile, except the lower classes. People might hiss then—not the ruffianly booing in the gallery on a first night now, but good honest sibilation, nearly always merited.

I ran the ordeal once—to be hissed, or not to be hissed. I gave a lecture at the Birkbeck, either *The Philosophy of*

Humbug or *The Anatomy of Merriment*, which were in my repertoire. I was about twenty-two then, and lecturing in town and out of town. I looked very much older—in fact I was born old, and only grew young when I was older. I led a busy life, not neglecting the business part of it. The Birkbeck audience was the most critical in London—it mattered not to me. I was never distinguished by diffidence or timidity, and possessed a certain modest assurance which stood me in aid in after-years. One of the Birkbeck committee—a friend of mine—said just before I went on,—“Don't be afraid ; if they like you they'll applaud to the echo—if not, they'll *hiss you*.”

Happily my subject tickled them, and I left the platform with laurels. Lecture-time was earlier then than it is now, and I was able to catch half-price to the Haymarket pit and see the veteran T. P. Cooke in *Black-eyed Susan*.

Grossmith personally was a delightful and accomplished man. George Dawson, who lectured usually on historical subjects, was on our list. A remarkable man, and a preacher. He established a religion of his own, and had a chapel at Birmingham, I think. He was an able and bold man, sometimes a rude one. I heard him thoroughly hissed on two occasions. On one, his train being late, he was about a quarter of an hour after time. He was received with a volume of hisses. He glared at his audience, from part of whom there was a counterblast of applause. When order was obtained, he said in a defiant tone, striking the papers before him, “The obligation is mutual—I can close my book and—I'll do it.” His doggedness turned the tide. He then continued by an expression of regret to the “respectable” part of his audience for a delay caused by circumstances not under his own control.

On the other occasion, on taking his place at the table, he said, “I think it extremely ill-bred for men in this room to keep on their hats.”—A score of men or so wearing theirs, tapped them on tighter and hissed vigorously. “Especially,” he continued, with a clever turn, “in the presence of ladies.” Off went the hats.

10 PROFESSOR PEPPER AND HIS GHOST

The Rev. J. M. Bellew—of whom I might write fully, as I knew him personally—gave occasional readings. He would have made a splendid actor; as it was he was a motley clergyman of the Church of England. In the reading of the services he was incomparable, and he used to fill a Chapel of Ease in Waterloo Place by his fine rendering. He subsequently drew a large congregation at St. Mark's, Hamilton Terrace. His style was theatrical, but his elocution and action perfect. He coached Fechter in *Hamlet*. It has always astounded me, and does so still, that our beautiful rubric is so frequently mangled by some clerics, who empty our churches. Bellew, from his abilities, might have earned preferment, but he was a man of pleasure, and eventually unfrocked himself and went over to Rome. His histrionic ability lived again in his son.

Toole the Great gave one of his earliest performances at our house. In his entertainment he sang *A 'norrible Tale*, in the garb of a policeman.¹ He has had so much written about him that I can add nothing with advantage. My acquaintance with him was cut short by my exodus from London, which severed me from literature and art. He called on me one day with his tall brother, the Toastmaster, whose "My Lords and Gentlemen, will you be pleased to charge your glasses" was dignified. On that occasion he gave me his portrait; how little I thought that he would become a celebrity!

Professor Pepper, of the Polytechnic, whose "Ghost" was the forerunner of many of the optical illusions which Mr. Maskelyne has introduced, gave me a lecture at the Marylebone in return for one of mine at his show, and a wonderfully good, educational show it was. I made a few dips in the diving-bell, but never could avoid a gasp when, seeing the water beneath me, I heard it bubbling overhead. I had a sort of "suppose the pumping-gear gets out of order" sensation about me. One of the illusions foreshadowed the wonders of the bioscope. Through eye-holes in a disk you saw a circular piece of cardboard, on

¹ The song was written for him by Edward Laman Blanchard.

which were painted racehorses in various strides, some with crooked knees, others with hocks in the air; jockeys in unnatural positions, unmounted; hurdles, some erect—a scene of odd confusion. In a moment, by a rapid revolution of a wheel, everything became in motion—a mimic steeple-chase; the jockeys mounted, plying their whips, and the horses jumping the impediments in true racing style.

There was one very gruesome turn, *The "Dead Head."* The head of "John the Baptist" was brought in on a salver and placed on a table, ghastly and gory as the "thing" Miss Maud Allan handles so deftly, lying on its side; the audience, breathless, and in obscured light, note a tremor; the blood-stained locks rise, the head becomes erect, the eyes open and flash in terrible emotion, and the curtain falls, to the relief of every one, as the light revives. I made the acquaintance of the Head—it was one which a subsequently well-known Music-hall manager bore on his shoulders.

At the Marylebone we also had Woodin with his "Carpet Bag," a lightning entertainer in the number of characters he portrayed; but I cannot afford further space for additions to our stock artists, save that Hannay lectured for us on English Wits and Humourists and Henry Russell, the inimitable portrayer of negro character, sang the songs which still live, in waiting for "*the good time to come.*"

CHAPTER II

VICTORIAN ACTRESSES AND ACTORS I HAVE MET

OF my acquaintance with actresses, one of the first was with a lovely girl of the name of Oldham, afterwards known on the stage as Miss Featherstone. I met her at the house of a mutual friend, a Mrs. Crouch, where entertaining people were to be found. When I first saw her, as I entered my hostess's room, she was attired in a tight-fitting dress of black calico, shaped to her limbs, a domino mask hid her face, and the scarlet cap of a Mephistopheles was poised on her head. She represented a Fury, and sang and danced with abandon. The grace of her movement—now tripping as a Maud Allan, then gyrating in the delirium of a nautch-girl—impressed my boyish fancy, an impression which was not decreased when, after a wild flight, she left the room, and returned in evening dress, a rosebud of a girl. She was kind enough to take notice of me—I was rather a nice boy then—and I was deputed as a safe escort to see her home. The result was disastrous. I dreamt of her for at least a week. I never met a brighter girl—full of fun and frolic, with a spice of *diablerie*, but as good as gold. Her voice was a marvellous contralto, and had it been trained she might have become a *prima donna*; as it was, she made a great success, and her "Captain Macheath" in the *Beggar's Opera* was the feature of a season. Her marriage with Mr. Howard Paul, a well-known literary man and entertainer, practically terminated her career as an actress.

Carlotta Leclercq was my next idyl, and displaced Miss

Oldham in my boyish admiration. Carlotta — to whose “Lady Teazle” a decade afterwards I played “Charles Surface” — was playing at the Princess’s Theatre, then under Charles Kean’s management, “Marguerite” to his “Faust.” The apotheosis of Marguerite ascending to the celestial regions was to me sublime — Carlotta was simply angelic. Charles Kean at that period was staging his plays with much splendour, partly relying for success on *mise en scène*, as Irving did and Mr. Tree¹ does. As an actor, to my mind he was much inferior to Macready, and not equal to Phelps, who, at Sadler’s Wells, was playing Shakespeare *simpliciter*. I make no comparison with our living actors — in fact, I could draw none — by which admission, I fear, I am making the comparison I would avoid.

Macready was almost before my time, but I remember him in *The Patrician’s Daughter*, and in *The Tempest*, with Priscilla Horton as “Ariel,” suspended in mid-air on a wire — “Polly,” who developed into a good actress, and became Mrs. German Reed. I saw Kean in all his best parts. His “Louis XI.” was, I think, his finest creation. “Crook-backed Dick” suited his short figure, and he was excellent in *King John*, in which that little treasure, Kate Terry, played “Arthur.” She was on her way to fame when, to his gain, but to our loss, she married Mr. Lewis. When Ellen came out it was never supposed she would match her clever sister, but she became unmatchable. Kean’s production of *The Corsican Brothers* allied with him that delightful actor, Walter Lacy, with whom I had a short acquaintance.

Sam Phelps, after Macready retired, was *par excellence* the tragedian of the day. He had great versatility, and his “Sir Pertinax Macsycophant” and “Jeremy Diddler” illustrated his comic vein. I occasionally went to his house in Canonbury Square, when my amateur proclivities were in full swing, and on one occasion rehearsed there with his daughter, Sarah Phelps. The piece was *Delicate Ground* and I played “Citizen Sangfroid” to Miss Phelps’s “Pauline.”

In the course of the piece there was an embrace and exchanged kiss. In this book, if the reader peruses it to the

¹ Now Sir Herbert Beerbohm Tree.

end, he will find some rules of instruction intended for the Bar student and young members of the profession to which I belong. I shall venture to demonstrate that, whether at the Bar or in the pulpit, a man, save by practice and preparation, can only gain a success of mediocrity. He must throw his heart into the part and lose his own identity. Take the Church. The young curate who can vanquish Miss Millicent, at croquet, often cuts a tame figure in the pulpit; he never lets himself go, he cannot get rid of his own personality, his congregation is untouched, he is always the "Reverend Amos of St. Mary Brides." His vicar ambles through his sermon as quietly as his jennet browses in the parson's mead. They are failures—there is no heartiness, and their pews are empty. So with the Barrister; briefs will not flow in unless he is earnest in everything he does—his oratory can only be perfected by preparation, and his action by practice. He must continually rehearse the play of his features, the expression of his eyes. If he wants to hold the mirror up to nature, let him not disdain the looking-glass.

And this divergence is all about a kiss.

A stage embrace, unless it is natural, is ridiculous. I speak, of course, of Amateurs as Amateurs. Jones who is "Romeo" never forgets he is "Jones." He holds "Juliet" at an angle, and dabs her cheek—all for the want of practice. I do not arrogate much to myself, but I can say I have always tried to do what I have had to do, thoroughly.

Thus influenced, I asked Miss Phelps whether I should be permitted, at rehearsal, to kiss and embrace her. "Certainly, Mr. Crispe," was her ready response, "by all means; it's only business." So it was "Citizen Sangfroid" kissing "Pauline" on the night of the performance, and not Mr. Crispe embracing Miss Phelps. I must admit, however, the practice was not unpleasant. The young member of the Bar should always remember that without preparation and practice, even to a gesture, he will never be in the first flight.

About this period Miss Reynolds was delighting audiences at the old Haymarket Theatre. Only for a short time had I the pleasure of her acquaintance. A career which would

have been brilliant, was nipped in the bud by a lifelong love romance with a member of the Bar who became one of its most distinguished ornaments. Nearly half a century afterwards, on the death of his wife, he married her. She was a Catholic, and simultaneously with the marriage he was received into the Roman fold. They are both dead, and the great riches he acquired passed into the purse of St. Peter.

There was a little theatre in London which for a time became the home of the amateur. It was known as Miss Kelly's, and is now the Royalty. Of Miss Kelly, the celebrated "Meg Merrilees" in *Guy Mannering*, I have but little to say, save that I have read that she was an accomplished woman and a capable actress. But to her house I may devote a space. To those who had "gone mad on acting" it afforded an excellent refuge. At one time it was run on a sort of tariff principle. The manager announced a play with a long cast. You could choose any character you pleased—at a price. Something in the following style was the *menu* :—

MISS KELLY'S THEATRE.

Hamlet.

						£	s.	d.
Claudius, King of Denmark	...	...	...	...	...	1	15	0
Hamlet, Prince of Denmark	...	...	...	...	...	3	0	0
Fortinbras	...	...	...	...	...	1	10	0
Polonius	...	...	...	...	...	2	10	0
Laertes	...	...	...	...	...	2	0	0
Horatio	...	...	...	...	...	2	5	0
Ghost of Hamlet's Father	...	...	...	...	...	1	0	0
Gertrude, Queen of Denmark	...	...	...	...	...	2	2	0
Ophelia, daughter of Polonius	...	...	...	...	...	3	0	0

Other characters from 10s. to 1s. 6d.¹

The jumble was exceedingly funny. "Hamlet" was probably played by a man of means, who had been better cast for the "Apothecary" in *Romeo and Juliet*. "Ophelia" scaled 12 stone at least; the "Ghost" was Pepper's on the stray. But it was good fun, and as the actors took out their

¹ F. B. Chatterton hired the Cabinet Theatre for the same purpose. On one occasion an ironmonger in the Edgware Road paid him thirty shillings for the privilege of playing "Iago" to his "Othello."

money in tickets there were full houses. But the venture had a brief career, and the house was closed, but soon re-opened as the "Royalty."

I recollect when, at that theatre, Marie Wilton, a child of immense promise, was playing "Cupid"—I fancy in what we irreverently used to call a "leg piece." I had seen her act "Henri" in *Belphegor the Mountebank*—a play staged by Charles Dillon, a robust actor of the Wallack style. It was an exquisitely pathetic performance. Some years later I played the part of "Belphegor," a very sympathetic one.

I made the acquaintance of "Toujours-Cupid" off the stage, on the occasion of my casting the romantic drama of *Don Cæsar de Bazan*, in which James Wallack had played the title rôle at the Haymarket Theatre. He was a marvellous actor, and in costume parts unsurpassed—probably the only man who has approached him is Lewis Waller.¹ Daring, chivalrous, and debonair, the reckless spendthrift stood out a living picture of the gay Spanish Don. As soon as the play was off I determined to essay the part. It became a favourite one of mine, and some years afterwards I played it with Fanny Stirling (the younger) as my "Maritana."

The engagement of the actresses was always left to me. On this occasion I had some difficulty. Actresses were scarce, and we could not afford an extravagant fee. To one actor and one actress then, it would be safe to say there are fifty now.

There were few theatres—excluding the transpontine: the two Opera Houses, the Haymarket, Princess's, Adelphi, Strand, Olympic, and a few others. In my difficulty Mr. Lacy, the theatrical publisher in the Strand, came to my aid; we bought all our play-books of him. He was good enough to lend me the original score of the music, songs and choruses (not the operatic music) introduced into the play. Mr. Lacy suggested Miss Emma Wilton, a young lady of promise who was training for the stage, but, said he,

¹ James William Wallack was also a fine actor. I heard him at the Marylebone Theatre in *Love and Loyalty*, a poetic play written by Robson, the Crystal Palace forger.

"You'll have to see Marie." Armed with the address, off I started across the Bridge of Sighs, and in the Waterloo Bridge Road found the humble home of the Wiltons. On admittance I was shown into a little parlour, sparsely furnished, but enlivened by a few ornaments and flowers.

I was received by a young lady, who informed me she was Ida Wilton. She was giving a lesson to two mites, who were sitting on high music-stools at an upright piano. Miss Ida herself was quite a child—scarcely, I should think, fifteen years of age. She wore a neat print dress, low at the shoulders, as the fashion then was for young girls. I think she must have been the prettiest of the Wilton girls—which is saying a good deal. I explained my business, and Ida informed me that Emma was out rehearsing, that her mother was shopping, and her father was not very well, but that it did not matter, as "Nothing can be done without Marie," and Marie was engaged. Of course I could wait, and was delighted with the prattle of my young friend. The mites, also, were pleased at their temporary relief from crotchets and quavers.

After a short interval Marie entered the room. I can only describe her as altogether charming; all the adjectives of panegyric would fail to paint her simple, piquant beauty—then her vivacity, her archness, and the sparkle of her merry eyes. But she was a very good little woman of business, and when I had booked Emma, on appro., Miss Marie put in a word for Ida. "Now don't you think, Mr. Crispe, Ida could play 'Lazarillo' for you?" I am sure she could have done; her lithe young figure would have suited the boy character, and under Marie's tuition the words would have been well said. Unfortunately the part was filled. I left the house with an invitation to join the girls at Sadler's Wells, for which Sam Phelps had sent them a box.

I note that Ida Wilton in 1859 played "Clara" in Augustus Mayhew's farce, *Goose with the Golden Eggs*. Her name so seldom appears in theatrical chronicles that I assume her career on the stage was not of long duration.

My exodus from London, some year or so afterwards, made me lose touch with my literary and dramatic friends,

but many decades after I met Miss Wilton as Lady Bancroft at the hospitable house of that charming actress, Mrs. Lancaster Wallis (Miss Wallis). I had a little chat with her about old times, but the incident I referred to had, naturally enough, been forgotten; but is it no compliment to her that it has remained fresh in my memory!

Miss Wallis's rooms were filled with actors and actresses, among whom I noted David James, the hero of *Our Boys*, and Charles Wyndham—not then knighted—one of our only few remaining comedians. Miss Wallis, who made her *début* in the early seventies, was then described as a young actress of pleasing appearance and much emotional power. Subsequently she played "Cleopatra" to James Anderson's "Antony," Ryder playing "Enobarbus;" at Drury Lane she essayed "Juliet," Terriss being the "Romeo," a delightful combination; "Hermione" in *A Winter's Tale*; "Imogen" in *Cymbeline*; and opened her husband's theatre as "Rosalind" in *As You Like It*. Miss Wallis must be accepted as one of our best remaining Shakespearian actresses.

At John Lancaster's house (his sad death occurred not many years after he built the Shaftesbury Theatre for his wife) I met at dinner Lionel Brough. I knew one of his brothers, who was at the Bankruptcy Bar, more intimately. The wonderful veteran was, as always, humorous and anecdotal, and, *apropos* of Miss Wallis having been a pupil of John Ryder, gave us a capital anecdote of that great stage manager. The marvellous scenic effects produced at the Princess's Theatre had been chiefly engineered by him. He was, in fact, Charles Kean's right-hand man. *The Tempest* was about to be staged, and a new method of producing imitation thunder was being tested.

Ryder was on the stage, directing some men who were stationed high above at the flies. The effect was produced by the velocity with which some heavy balls were rolled down certain tubes. I may be wrong as to the mechanism. The experiment was rehearsed as follows:—

"B-r-r-r!" went the thunder.—"B-r-r-r!—B-r-r-r!"——

"Won't do at all, boys!" said Ryder. "Try it again, boys; try it again."

"B-r-r-r!"—again went the thunder—louder and longer. "B-r-r-r!"——

"Not a bit like it, boys!—Try it again, boys!"——

A storm had been rising outside, and a flash of lightning was followed by a startling peal.

"What are you doing now?" said the exasperated manager. "What are you at, boys?"

"Whoy, Mister Ryder," cried a voice from above, "that was a real clap o' thunder!"

"Not so bad," said Ryder; "but won't do for me. Try it again, boys; try it again!"

John Lancaster had a costly apparatus put up at the Shaftesbury Theatre, by which you could turn on thunder, lightning, or rain as required, but you could not have real water, as Phelps had at Sadler's Wells, where the New River ran under the stage.

Contemporaneous with myself—born in 1835, and called to the Bar in 1862—was Montagu Williams, a bright and at first unsettled genius. In turns he was master at a grammar school, an officer in the militia, nearly drafted off to Sebastopol, a playwright, and an amateur off and actor on the boards. He finally settled down to the profession in which he so highly distinguished himself. I never saw him act, but I did see some of his plays. I recollect the *Island of St. Tropes*, in which he collaborated with Sir Francis Burnand, a stirring drama which had a long run.¹

In his delightful *Leaves of a Life* he gives a humorous instance of stage-fright. For it I refer the reader to the book, as it is my purpose not to crib anecdotes from other men's works, although reserving to myself the privilege of using any material to which we had equal "rights of user."

¹ He also wrote a laughable farce, *The Benecia Boy*, also *The Volunteers' Ball*, *The Carte de Visite*, *Easy Shaving*—all in collaboration with Burnand.

20 STAGE-FRIGHT WHEN I PLAY "BEVERLEY"

The reference gives me the opportunity of referring to stage-fright—a generic term, whether applied to the Bar or the stage. A humorous instance happened to myself. I was playing "Beverley" in *The Gamester*. Near to the close of the play the ruined man, in a sad soliloquy, in which he ought to hold the house, takes poison, and puts an end to his miserable life. All went well, and the audience quiet as mice. I said my words, and then, lifting a small phial, let the contents trickle down my throat. Unfortunately I had not rehearsed with a bottle. What on earth was I to do with it? flashed across my mind. It is wonderful how many ideas can crowd into a second of time. Should I put it in my pocket, and if so which pocket? Should I retain it in my hand, clutching it; in another moment the audience would be in a fit of laughter. Agony! Happily, the man who played "Stukely," the villain of the piece, who was at the wings, saw my dilemma, and shouted in a stage whisper, "Throw it down, you damn fool; throw it down!" And down it went with a crash and the situation was saved; my poor family rushed in, and I fell dead into the arms of some one whose duty it was to catch me. This *contretemps* really happened through bad rehearsal.

I have seen many instances at the Bar of this kind of fright. A counsel is getting on swimmingly, he has voluminous notes, but unfortunately they are incorrectly paged, he gets on a case which does not apply to his argument, he flounders and is lost. In a young counsel's mind the light seems to go out all at once; every one feels sympathy, the kindly judge tries to help; in many cases the counsel on the other side—I have myself so aided. It is scarcely nervousness; I share the opinion of many, that without nervousness there can be no genuine feeling, and that without feeling there can be no perfection. One of the greatest advocates we ever had—a man who, with much abnegation, gave up his right to be Lord Chancellor—was depicted in *Vanity Fair*, labelled "Nervous," which might have meant "strong";—but the Bar knew. No actor can excel unless he possesses it. I was always nervous before I went on, but when once on, I

fancy, as unconcerned as Charles Mathews in *Cool as a Cucumber*. Call me egotist if you please. I was very fond of playing that great comedian's patter parts. The rapidity with which he said his words, yet with every word distinctly spoken, was marvellous. Curiously enough, that rapidity of utterance was transmitted to his son, whom his friends call Willie, but who as an accomplished advocate is generally known as Sir Charles Mathews. It is curious also that the actor entrusted his son to another actor who had become a barrister—Montagu Williams—and further, that when I had no intention of going to the Bar I somewhat prophetically played a Mathews' character—that of a briefless Barrister—"Quality Court [initialed Q.C.]," in *The Lawyers*.

CHAPTER III

FURTHER AMATEUR EXPERIENCES

BEFORE I leave my amateur experiences, just a few lines more—as to practice. As the young counsel who has taken as a model some eminent man in his profession—as he should do—determines to do equally well that which the other man has done, so the amateur actor must practise even to a stage fall.

The stage fall is always difficult, in the sense of being natural; that in “Beverley,” the catch fall, easy; the forward fall is simple enough, but the back fall, a caution. I once added to my phrenological bumps by rehearsing the latter as “Sir Edward Mortimer” in the *Iron Chest*. Irving, I think, announced “Beverley” and “Sir Edward Mortimer” as to be played by himself one Lyceum season, but I fancy the plays were not produced. They are both fine plays, and *The Gamester* was translated into French, and played in Paris as *Beverley*.

I once played “Maurice Warner,” in *Camilla's Husband*. Miss Hughes, one of the most natural actresses of the time, was “Camilla” (this was some years after the period I am writing about). I had to rescue the young lady from drowning in an imaginary lake, and to carry her, of course perfectly dry, across the stage. As she was somewhat buxom I doubted my capacity. I could scarcely dandle her like a baby or drag her like a sack, so I confessed my difficulty.

“Why, Mr. Crispe,” said the pleasant actress, “nothing is easier. Now practise. Place your arm round my waist—that’s right—lean to your left and throw out your right hip.

"I'll give a jump—now"—she jumped—"there I am, safely landed."

And she was, and I carried her with ease. I think her husband was Gaston Murray, a good utility actor.

A few words of remembrance of Miss Raynham, the original "Sam Willoughby" in the *Ticket-of-Leave Man*, the most sprightly player of boy characters of her day. Off the stage she was delightful and juvenile. I once enjoyed a game of whist with her and another young actress, Lydia Foote, which was about the noisiest rubber I ever played. Every one revoked. Poor girl! she died when only twenty-seven.

It was the fashion in those days to ridicule amateurs; and certainly not without cause. I have not ventured to express any opinion as to my own merits, but, with the quiet egotism I have always possessed, I did not think small beer of myself.

Let any young man who is training for the Bar remember, that if when he joins it he hides his candle under a bushel, no one will see the light. There is a difference between being opinionated and entertaining a good opinion of yourself; the latter is a tonic for success, but if you take too much of the medicine—buy a coffin. A wholesome belief in your own ability can do no harm—a little modest assurance, and do not fail to express it. The man who dubs you egotist, windbag, and froth-blower, in all probability has no "ego" of his own—not even an air retainer for intellectual bubbles. You must believe in yourself; if you do not, no one will believe in you.

The theatrical press was rather bitter upon us—one paper, the *Era*, especially so; a whole column was devoted to an attack upon amateurs, and our club in particular. The criticism was scathing—the play *Still Waters Run Deep*—and in the final lines I was damned with faint praise, "The best of the *set* was Mr. Crispe, who played 'John Mildmay.'" But we had better men than those who acted with me on that occasion. One was my old friend Dickens—no connection of the Immortal. He was a very able man and his "Hamlet" one of the best amateur efforts I ever saw.

We played once together *Ion*, and, strangely enough, on the day its author, Mr. Justice Talfourd, suddenly died on the Bench at Stafford Assizes. I played "Adrastus," Dickins "Ion." Serjeant Ballantine, in his *Experiences of a Barrister's Life*, writes that "Ion" was one of Macready's best parts; a slip—the great tragedian played "Adrastus." Many years afterwards Mr. Dickins was foreman of the jury in the great Tichborne trial. His late brother's troubles with dealers have caused some sensation—a warning to the amateur collector of china.

One of my oldest amateur friends was Mr. Donaldson, who for services to the French Government was created a Chevalier of the Légion d'Honneur. He and his brother, Sir George Donaldson, both distinguished themselves in Art.

I must also not forget Mr. Kemp, afterwards the well-known Q.C. Those who knew him at the Bar would scarcely have given him credit for dramatic tastes, but in his youth he was an excellent amateur. I once played "Antonio" to his "Shylock." We used to call him "Theatre Royal Kemp" after his initials, T. R. At the Bar he was sometimes witty, especially in interposed remarks and audible asides. He was at one period leader of the Mayor's Court, which he abandoned for the wider sphere of Nisi Prius.

I recall to my mind a pleasurable recollection of Carlotta Leclercq, by whom I had been so severely smitten when a boy with turn-down collars. We met again on a different basis. I got up *The School for Scandal*. Carlotta played "Lady Teazle"—I "Charles Surface." Mrs. Silk Buckingham was in the cast; a very excellent actress, usually to be seen at the Haymarket Theatre, then the home of standard comedy. Carlotta was charming as ever, but Sheridan was a little out of her line, and my passion had faded. I think her sister Rose was the better actress of the two.

Any one who has patience to follow me to the end of this book will note the lesson I often inculcate, that what is worth doing is worth doing well; that everyone should be "thorough," whether at the Bar, in the Church, or in any other profession. I do not say or believe that all I did was

well done, far from it, but I can say that I threw my heart into my work, whatever it was.

Mediocrity on the stage, especially among actresses, arises, in my opinion, not from want of intelligence, but from inability to sink personal identity. I certainly sank my own somewhat inconveniently when playing "Charles Surface" on the occasion referred to. It will be remembered that in the screen scene, when the screen falls, "Charles" takes the stage and chaffs the company all round, "Sir Peter," "Lady Teazle," the immaculate "Joseph." He laughs continuously as he says his words, and makes his exit in a burst of hilarity. The tradition is that "Charles" gets his call on the pose, and before the curtain falls (very inartistic, no doubt). I determined if I did not get mine, I should be a dunce in the art of Thespis. All would depend upon the laugh.

To laugh naturally on the stage is difficult. I remember the melodious laugh of Mrs. Nisbett as "Lady Gay Spanker," almost equalled by that of Mrs. Bernard Beere—how delightfully natural, how different to the mere cachinnation of to-day! Well, my rule guided me—I practised. I laughed consumedly. I was driven out of my house. I was living in the country then; the servants were giving notice—Master was mad! I took refuge on the hills. I laughed at my ease. The shepherds disregarded me—they thought me harmless. One day I heard an echo. On the other side of the hedge I saw a man—Charles, a London entertainer—who had also gone there to laugh: a coincidence. On the night when the crucial moment arrived, I made my exit in a wild burst, and remember nothing until I found Mrs. Silk Buckingham shaking me vigorously. I was laughing hysterically, but could hear the clapping of hands. "Be quiet, you fool!" she said; "*go on and take your call!*"

At that period I revived "Don Cæsar" on the Wallack lines, and was again in search of a "Maritana." Fanny Stirling, the daughter of *the* Fanny, had made her *début* as "Miranda" in the *Enchanted Isle*, at Drury Lane,¹ but at the moment she

¹ Tom Taylor wrote a comedy, *A Duke in Difficulties*, especially for her; played at the Haymarket.

was out of the bills. I am afraid, through me, a clever young actress was lost to the stage. I placed myself in communication with Mrs. Stirling, and on appointment made my bow to that adorable actress at her house in Brook Street. I also wanted a "Lazarillo," and on the occasion Mrs. Stirling introduced me to Miss Latimer, very much as if I were a stage manager. "This is Mr. Crispe, Rose; jump up and show your paces." She did, and I thought her a monstrously fine filly. Rose Latimer was exceptionally beautiful. I saw her occasionally at her mother's house in Clarges Street. She was on the stage only for a short time. Our performance, which was for three nights, was in the country, and I had to fetch the ladies from town. The introduction of Fanny to the *corps dramatique* by me resulted in "Don José," the villain of the piece, marrying my "Maritana." I solve the mystery—which at the time puzzled the public—as to why such a promising actress as Miss Stirling deserted the boards. The swain was a young solicitor, a member of a somewhat serious firm. His family were very angry, and Mrs. Stirling was sent to Coventry. I never had a brief from *that* firm.

Mrs. Stirling had her revenge; she managed to borrow her grandchild, and had a photograph taken of her, as in a picture-frame, which the grandmother held—a pretty conceit. It had a large sale in the Burlington Arcade. The marriage turned out a happy one. On the last night we gave a game supper, and Mrs. Stirling made one of those excellent speeches for which she was noted. Of her time, I know of no better actress in her particular line. In characters such as "Mrs. Sternhold" in *Still Waters Run Deep*, in which I played "John Mildmay," and Marie de Fontange in *Plot and Passion*, in which I played "Henri de Neuville," none could surpass her. In her old age, her "Nurse" in *Romeo and Juliet* was of high merit. More than one actress took her as a model—Madge Robertson (Mrs. Kendal), I fancy, among others. Off the stage she was delightful. The last communication I had from her was an invitation to a dramatic ball at the Hanover Square Rooms, when she hoped I should lead off with "Yours affectionately, Fanny Stirling."

Poor Ada Cavendish, who made her *début* in 1863, acted with me more than once, on one occasion "Zephyryna" in *Belphegor*, I essaying the "Mountebank." A clever amateur played "Fanfaronade," Harry Fiest ("Hotspur" of the *Daily Telegraph*). Blanchard, in his Diary, 1874, records his death with a word of regret. He was very witty. An instance: we belonged to the same Masonic Lodge (I did a little Masonry then, but did not throw as much heart into it as Judge Philbrick does). It was held at the hostelry of a Mr. Bean, a veteran, who used to sing us sweet songs after banquet, including that of the "Entered Apprentice" and who had recently died. A new man had been installed, of the name of Podmore. Fiest added to some words of regret that: "We might console ourselves from the fact that although we had lost our Bean, we had one '*Pod more*.'"

I knew Ada Cavendish when she was quite a girl. Even then she had the true dramatic ring. She narrowly escaped becoming a great actress, but there was a cloud over what promised to be a happy life.¹ Many years afterwards, and after her death, when I was living in Mayfair, I occasionally went to Dr. Kerr Grey's chapel in Grafton Street, and over a very plain altar-piece he had placed a few memorial notices, little better than painted boards. One was to the memory of poor Ada, with whom he had had a romantic friendship.

He ran a somewhat amusing show, the service being enlivened by the song of some noted soprano, or the violinist of the season would oblige, in the interval of prayer. He was a robust preacher and a good fellow. He dined with us sometimes and his grace before meat was edifying.

I must not omit that I once played at the Haymarket Theatre the "Duke" in *The Honeymoon*. The man who played the "Mock Duke," with whom I had frequently acted, was the best low comedian I ever heard save Robson. Unfortunately, he was "stage-struck," and threw up an appointment of a thousand a year with some eminent

¹ She may be remembered as creating the part of "Mercy Merrick" in *The New Magdalen*.

newsvendors to take Her Majesty's Theatre for comedy at popular prices. He shut up in about eight weeks, with a deficit of £5,000, and professionally I saw him through the Bankruptcy Court—*gratis!* but not *con amore*.

Almost my last appearance on the stage was at the Exeter Theatre, and the occasion was an interesting one. At the house of a most charming host, Mr. William Richards, of Exeter, I met, for the first time, Frank Lockwood. Mr. Richards, whose friendship I enjoyed for many years, was an ardent politician, *raconteur*, and also an exceedingly fine amateur. He was very well known to lovers of the stage, and I am sure that Lady Bancroft and Mrs. Kendal have a kindly remembrance of him. Mr. Birrell, in his Memoir of Sir Frank Lockwood, narrates that Richards introduced Lockwood to the Kendals. The introduction might have resulted in depriving the Bar of a man destined to become one of its most distinguished members.

Lockwood joined the Kendal company as an actor on a provincial tour, but of no long duration. I fancy he was built on too large a scale for the stage. He had had prior to this a good histrionic training, and joined a troupe of amateurs, who had a tour of their own in the West Country, going from theatre to theatre. Mr. Birrell also refers to Edward Birom, a very intimate college friend of Lockwood's, with whom he shared bachelor chambers.

On the same occasion I made Birom's acquaintance. He was a fascinating man, very handsome, and in *jeune premier* parts as good as H. F. Montague in Robertson's plays. Some years afterwards he was called to the Bar, and used to give me a look up either at my house or at chambers. He did not, however, take seriously to the profession. In the charming *Bancroft Memoirs* he is mentioned as an excellent amateur, and as helping at Pontresina in *The Vicarage*, which the kind-hearted Marie was playing in aid of local charities. I saw him play "Harry Spreadbrow" in *Sweethearts*—an admirable performance. There was also another friend of Lockwood's whom I met at the same house. He was called "Little Hunt," a very enthusiastic amateur,

who also became a barrister. I made up the quartette of the uncalled.

There was a week's festivity at Exeter in honour of the opening of the Albert Museum. In the building there was a fancy fair, with side shows. We had a Richardson's Show, and Lockwood was "whipper-in." In the evening there were performances at the theatre. Among other parts, I played "Deadly Smooth" in *Money* and "Scatter" in *The Porter's Knot*. In the former I recollect an extravagance: I ordered a fashionable suit from Poole's for the Club scene. Mr. Richards was an admirable "Graves." Birom was one of the cast, and also Hunt.

We had a thoroughly jolly week, and at the end of it Richards gave a handsome entertainment at his house, in which my wife and I were guests. I was the innocent cause of almost destroying the harmony of the party. Among other accomplishments little Hunt was a prestidigitateur, and (or believed he was) a hypnotist. In course of the evening some one, no doubt inspired by Hunt, suggested that he should give a specimen of his hypnotic power. He readily assented, and after some demur on my part it was arranged that I should be his victim. A half-circle was formed. I was placed on a chair and Hunt commenced his experiment. I saw Lockwood at the back, scowling with contempt. I at once determined to simulate. Hunt began with various passes, at first with no effect; then my face began to twitch, my eyes to roll, my hands to quiver, and at last the face assumed the passivity of unconsciousness. Hunt then turned round to his audience and I heard him say, "He is completely under my power!" As I had not closed my eyes I could see Lockwood jeering. "Now," continued Hunt to the audience, "watch me." After some playful things he made me do, he took a sovereign out of his pocket, and, placing it in his palm, held it out to me. "There is a sovereign," he said to me; "you cannot take it, but if you do you may have it." It was a sore temptation, but in loyalty I resisted. I made a feint of trying. I grabbed at it, I missed it, I tried again and again with like effect; at last

Hunt, thinking me distressed, said, "I must bring him to," and after some counter-passes and a vigorous slap on my shoulders, I—recovered.

It was amusing to see how Hunt strutted about. Lockwood and Birom were disgusted, and left the room for another, luckily a distant one, to have a smoke. Shortly afterwards Hunt followed them. From Richards I learned what resulted. Hunt, puffed up, began bragging of his power. This annoyed Lockwood, who thought it was "a put-up job," and I a confederate, so he told Hunt not to be an ass. Hunt got huffy, and Lockwood threatened to pitch him into the middle of next week, which, figuratively, he could easily have done, and finally the bellicose disciple of Mesmer gave Lockwood the alternative of Ostend or Calais sands. Unfortunately, a young lady, who had a *penchant* for Hunt, was passing the door and went into subdued hysterics. Richards, hearing of the "tamasha," came up to me to ask what the tomfoolery was. He was a little incensed, but easily appeased when I told him I was the culprit, and that Hunt really believed he had hypnotised me. I saw Lockwood at once, and when he heard how the little man was self-duped, his good-nature came back, and before the evening was out he made his *amende*. After this, however, I am sure Hunt looked with contempt on the man who had refused to take a shot at his little target.

For the moment I bid goodbye to dear, delightful Frank, of whom at the Bar I shall have to add my tribute of admiration later on.

If I did not show much ability as an amateur actor I possessed some versatility. I played "Claude Melnotte" in *The Lady of Lyons*, "Cox" in *Box and Cox*, "Dr. Pangloss" in *The Heir at Law*, "Goldfinch" in *The Road to Ruin*, "Bottom, the Weaver," "Captain Absolute" in *The Rivals*, the "First Witch" in *Macbeth*, and besides a good many others which I have mentioned in previous pages, *The Bachelor of Arts*, *The First Night*, *The Follies of a Night*, *Monsieur Jaques et mults aliis*.

CHAPTER IV

LIFE IN LONDON IN THE FIFTIES

WHEN I was eighteen years of age—that was in 1851, the Exhibition year—I began to see “Life in London” as it then was. I was initiated into its fascinations by one Frederick Tolfree, the son of an Indian judge. He was a man well advanced in years, but fond of young society. He took a fancy to me, and was, I fear, injudiciously kind. He had lived through the “Tom and Jerry period,” had known Pierce Egan, Theodore Hook, with whom he had many pranks, and most of the wits and young blades of the late Georgian period. He found me a ready listener to his graphic accounts of bygone devilries. His young time was when the *duello* was giving place to a new code of honour, when the town lacked gas and the running footmen dowsed their flambeaux in the iron extinguishers—some of which still remain at the doorways of old West End houses; when the country roads were not free from the highwayman, and the custodian of the night proclaimed the hour of the morn and the state of the weather.

I remember one story he told me of Theodore Hook, and a scapegrace adventure in which, with some other light-headed ones, he took part. Tired of knocker-lifting and moving a sweep’s pole to the shop of a clear-starcher—all trades had their signs—they sought pasture for fresh mischief at the Pump Room at Cheltenham, in which town they were, and, provided with gimlets and drivers, they screwed up all the doors of the retiring alleys, to the great inconvenience of the frequenters of the Pump Room the following morning.

There was a great outcry, and a reward offered for the

discovery of these offenders against public decorum ; but as they all attended and took the waters—in moderation—they escaped suspicion and detection.

Tolfree was at one time, after many vicissitudes of fortune, tutor—club leader, he said—to young Walter Scott, a relative of the great novelist. At another time he eked out a precarious existence by the pen, and, as I understood, was an occasional contributor to *Punch*, in whose pages I fancy I once read the then popular song of "Jump Jim Crow," turned into French by him. He assisted in starting a rival comic paper, which had a brief existence. In his rooms I met Poole, the author of *Paul Pry*, a quiet old gentleman, also very hard up, who was at the time rewriting and putting into metre some lyrics of a would-be poetess—for which, with some glee, he told me he was to have five guineas.

Tolfree was a good fellow and a thorough Bohemian. One day he took me to the Exhibition, of which I have but a few faint recollections, including the big Hyde Park trees cased in under the crystal roof, and Power's beautiful statue of the Greek Girl. He pointed out to me the celebrities who happened to be there, and a military-looking man he had winged at Chalk Farm. One day he took me to Drury Lane Theatre—converted for a time into a Hippodrome, which reminds me that before I was in my teens I saw the *Battle of Waterloo* at Astley's, and have a faint recollection of Ducrow and the celebrated ring-master, Widdicombe. Later on I have a vivid remembrance in the same house of Adah Isaacs Menken,¹ very lovely, practically nude, and tied on a bare-backed steed as *Mazeppa*.

In the evening we finished up at the Cider Cellars, where we had scalloped oysters and Moselle cup, and I smoked some fine Havannahs which did not agree with me.

One Sunday Tolfree took me to the old Queen's Bench Prison, where a friend of his was then resident, and where he

¹ She was the wife of J. C. Heenan, the pugilist who fought Tom Sayers ; her talent was recognised by Charles Dickens and Alexandre Dumas, and I believe she inspired Swinburne's beautiful poem of "Dolores."

himself had been an occasional inmate. His friend was just out of the tub, and was going to play a game of rackets. To my mind, the Bench seemed a pleasant place of retirement. There was a lady resident, who was in contempt as to paying some fine for selling cadetships in the East India Company, and in complicity with her there was a well-known fashionable preacher—the good old times !

Once launched, I was soon sailing on my own account, but my life was not one of dissipation, rather of inquiry. I was acquisitive and wanted to see everything, and if I sometimes saw something which was not good for me, it did me no harm. I had seen it, and there was an end of it.

Leicester Square in the fifties was the centre of Metropolitan vice. It had made many bids for respectability. In it I had once seen Miss Linwood's Gallery, in which that interesting "Mistress of the Tambour" had collected the choicest specimens of tapestry embroidery—many of her own work. This faint revival of the times when noble dames with their delicate fingers weaved pictures portraying the gallant deeds of their knights, soon passed. Truly, girls still worked their samplers at school. There was a period of knitting, netting, and crochet, and fashionable ladies plied their needles in the presence of their guests, but the elegance of the tambour frame had waned. There was also a panorama, on a small scale, in a little room near the present site of Daly's Theatre ; moving pictures, with day and night effects, which took my boyish fancy ; and in a side street was a waxwork show.

Another bid for respectability was the erection of the ill-fated Panopticon, a hall of science, built as a rival to the Polytechnic. It was burnt down, and the Alhambra, as a "Home of Terpsichore," was its Phoenix. Still there was another attempt, when Mr. Wylde built his Great Globe on the garden space of the square, which for many years was a dustbin for dead cats, dogs, and other dreadfuls. In the Globe in a few minutes you could run from London to Cairo and see the dancing-girls—or to India and see the nautch maids—skate on the Neva, watch the waterfalls of

Niagara, or pluck oranges at Seville. It was educational, but not remunerative. One of my quondam acquaintances later on was Baron Grant, the great speculator, who built a huge house at Kensington sufficiently big, it was said, "to *take in* all his friends." Whatever his failings, Londoners owe him one boon—the present pretty pleasure-ground of Leicester Square and the statue of Shakespeare, which replaced the grimy figure of King George I.—the favourite cockshy of the hooligans of the day.

I saw him once about a Dutch concession; which reminds me of a slap at my amateur proclivities. On the same business I saw Mr. Mildred, of the firm of Masterman, Mildred and Co., the bankers. He said, "I will call Masterman." I assumed what I thought was the demeanour of a City man. When Mr. Masterman came in he said to his partner, "Let me introduce you to Mr. Crispe, the best Dr. Pangloss off the stage." I did *not* hit off my new *rôle* of financier!

Leicester Square, at the time of which I am writing, was more isolated than it is now. On the north-eastern side was a narrow outlet called Cranbourne Alley, noted for its bonnet shops and millinery wares. The western view was blocked by a cone of old buildings, later on to give way to an open space *ornamented* by a hideous fountain, on the apex of which was an attenuated figure of "Fame" (or ill-fame) or some other heathen mystery, apparently shafting arrows at the daughters of Phryne. But it is with morals, not monuments, we have to do.

In the early fifties of the last century Leicester Square and its purlieus seemed to focus vice. Miss Linwood's house had been pulled down, and in a new garish building, where now stands the Empire, Madame Wharton held her "Poses Plastiques." There peer and 'prentice could study the nude in art, with the added attraction of life and pulsation. Close by was an entertainment much more gross, just where the Turkish Baths now stand—another exhibition of nudities not of the high class of the Madame Wharton type, not classical as in her show, but a mere display of very doubtful charms. After the performance, to those who could afford a

bottle of champagne of doubtful vintage, the ladies were on view, and to be seen, still unclad, in an adjacent drinking-room.

In the same building, or next to it, Lord Chief Baron Nicholson held his "High Court." He was a baron of his own creation but had a smattering of legal knowledge. He was once owner of a scurrilous paper called *The Town*, to which, as a boy, Edward Laman Blanchard was a contributor—for bread and cheese. At his court, every night, a jury was empanelled from the audience, and a mock trial took place, the baron presiding as judge. Witnesses were called, counsel heard, and the learned judge summed up. His addresses to the jury were humorous and racy, but under a veneer of polish there was a foul layer of indecency.

Renton Nicholson had had a chequered career, which, in his sixteenth year, commenced as a pawnbroker's assistant at Shadwell, where he became a frequenter of the local gin-palaces and made the acquaintance of the "rooks" of the parish, and not a few of the pugilists. He kept in the trade of "*my uncle*" for many years, and his business brought him in contact with some of the citizens of "Bohemia," among others, impecunious actors and literary hacks. The latter possibly gave him a taste for journalism, and he started *The Town*, a paper which in its earlier stages was sufficiently respectable to be supported in contributions by the small literary fry of the day, among others poor Edward Laman Blanchard.¹

The Town, a Society paper, eventually became a pest; the sanctity of private life was invaded, and so gross were the attacks made on private character with the flimsy disguise of hyphenated initials that many a man and woman paid toll to keep out of *The Town*. For Blanchard it is only just to say that his contributions were principally in the form of theatrical reviews, and were no doubt discontinued when the paper became notorious.

There was no hole-and-corner business about these night dens; any one—man or youth (not women, I am glad to say)

¹ This Blanchard was the great pantomime writer, and no relation of Laman Blanchard, the friend of Douglas Jerrold.

—who had a few shillings to spare, could walk in. They were drinking-houses, and apparently their licenses were easily obtained, and renewed. Happily now legislation has rendered such abominations rare, if not impossible. There were a few restaurants in the square, nearly all of bad repute, and one of them—the White House—notorious. All these places were under police supervision, and nightly there was a patrol through the rooms by a sergeant and his men; but as there were but few charges, I fear these visits were not unprofitable. In one year an entire division of police had to be drafted away in consequence of the bribery accepted and sometimes levied.

Leicester Square and its locality was itself extremely interesting as the centre of the foreign community. There, in the side streets, were the scum of other nations—welcomed by hospitable Albion, the home of the refugee. There hoarded the *escrocs* and *chevaliers d'industrie* who had found Paris too hot for them; the low plotters of Bellevue, waiting for another Commune of burning, bloodshed, and pillage; the Italian assassin preparing bombs; the forgers and traffickers in stolen bonds; and an army of strumpets, French, Belgian, and German. There was comparatively no extradition then, and but poor, if any, alien laws.

In some of the streets, however, many respectable foreigners resided with their families, attracted possibly by London trade—others refugees for legitimate political reasons. It was always interesting to wander through these streets; you were out of England as completely as if you had crossed the Channel; and more so, for these strays were congregated in the area of a square mile. The shops with the foreign journals, the *charcuterie*, with its jambons, its truffles, olives, and other delicacies, the *boutique de vin*, with the long bottles and flasks of real “Chianti,” in wicker casings, the *sirops*, the liqueurs, all “*véritable*”; the *épicerie*, with its macaroni, its fragrant spices, its vanilla and *chocolat de Paris*—all made up an attraction for the window-gazer. I recollect a horse butcher, whose displays were not so attractive; but the foreign taste had degenerated, so he failed, but subsequently succeeded in the cat’s-meat line. Nothing now remains but a

few wine-shops, where you may still buy sound Bordeaux by the *litre*, a good many restaurants where you may get a *bouillon* for a few pence, and some stationers who sell the *Figaro*, the *Petit Parisien*, and the *Indépendance Belge*.

It was "Paris in London," and induced me, in 1855, to visit "*la ville lumière*" itself, accompanied by two merry youths. We became literally explorers, and scaled the steeple of every church to its highest attainable point. One of my companions was over-venturesome, and once nearly got us into trouble. We visited Notre Dame, and while in the great bell—I recalling at the moment the Hunchback and Esmeralda—he endeavoured to swing the clapper, in which attempt he happily did not succeed. We missed him for a time, and then heard a clang, clang. By means of a ladder he had clambered up to a higher belfry and had set the bell ringing. We learned afterwards that it was used only in case of alarm; and consternation ensued in the streets below. He, however, could not stop the clamour, and, returning to us, suggested immediate flight. We were, however, at once captured by an official in uniform, who proposed, with a vigorous accompaniment of French expletives, which happily we did not understand, to convey us to the tribunal, where the trespass of our friend would be visited upon us. Happily the production of several official portraits of the third Napoleon saved us from disaster. Almost at the foot of Notre Dame was the Morgue, and as our rooms were near we usually visited it every morning before breakfast (gruesome idea), our only excuse that it was one of the sights of Paris. There in the early morning crowds of *ouvriers*—French women and girls, students, and even schoolboys—passed through the death chamber *en queue*, some with tears in their eyes seeking for a lost loved one, some laughing and chatting as if they were at a play, others attracted by a morbid taste for the dreadful, and all to see the terrible sight of dead bodies displayed on slabs, and all but nude, and with their clothes hanging on lines to help identification. Here was the body of a young grisette, peaceful as if in sleep—a poor child who had thrown herself

from the Pont Neuf the night before, probably in a paroxysm of jealousy ; there the lithe frame of a possible student of the Latin Quarter—a slight red streak in the region of the heart marking the spot where the dagger of the assassin had struck him. This recollection is a painful one, and I am glad that now this terrible show is not open to the general public. While in Paris my national pride was somewhat shocked when I read on the *affiches* of the British reverse at the Redan ; then came the news of the taking of Sebastopol, and the excitable Parisians were at once in their element. The guns at the Invalides fired salvos of rejoicing, the bells rang in merry peals, the theatres were thrown open free, the *grandes eaux* at Versailles were set in play, the *feu d'artifice* dimmed the brightness of the stars, the streets were illuminated, and Paris was delirious. But this is not a book of my foreign reminiscences, so *revenons à nos moutons*.

But to return to London gaieties. About eleven o'clock the tide would run towards the Haymarket, the east end of Piccadilly, and the Quadrant, which then formed part of Regent Street. The Quadrant was one of the few architectural ornaments of the West End, and owed its demolition entirely to the nightly nuisance. The local quidnuncs, with a sapience which has been emulated since, but never surpassed, determined that instead of getting rid of the nuisance by suppressing it they would pull down the stable which sheltered the jades. So the beautiful open arcade was demolished.

I left you in the Haymarket. The trend is now up the hill ; the women are trooping to Windmill Street, where the Argyle Rooms stood, and the Trocadero now stands. A dancing-room, of which one Bignell was the proprietor. A band is playing but there is no dancing ; perhaps an occasional waltz. Half a crown is charged for admission. If not identical with the Argyle Rooms, which were built in 1736 and founded by Colonel Greville, they to a great extent followed the lines of his establishment. The original Argyle Rooms were called the "Fashionable Institution," and were fitted up with great magnificence, and used for the purpose of theatrical representations and also as a ball-room

for that dubious species of amusement called "masquerades." Over the stage was the following appropriate motto:—
"*Sollicitæ jucunda oblivia vitæ.*"

When in Paris in 1855 I visited the Château des Fleurs, the Jardin Mabille, and the Maison Rouge, where the students of the Latin Quarter gyrated madly with their favourites of St^e. Loretta—scenes of gaiety—but the Argyle was a "whited sepulchre."

I also visited the Holborn Casino, where there was dancing and singing and much the same sort of company, but not so *Piccadillyish* as that charming artiste, Lottie Collins, used to say in her song of "The Widow."

There was also Caldwell's Dancing Rooms in Dean Street. There, there really was dancing—good vigorous lancers and polkas. The rooms were much frequented by young ladies of the millinery establishments. In Paris they would have been called "Grisettes," at Caldwell's they were called "Flappers"; why, I know not. I met there, quite by chance, an old school chum of mine, son of Major Reed, a friend of my mother's. We naturally began chatting about old times—had been in the same form and under a young usher of the name of Pack. While we were talking, the master of the ceremonies, in a dress suit, with a rose in his buttonhole, came up to us and said, "I think I have seen you before. Can I introduce you to partners?" We recognised him at once—it was Pack. When we revealed ourselves I was pained at the shocked pride which coloured his cheeks. He was a musical genius, and had taken his degree as doctor of music, but things had gone wrong with him and he was there, as he said, for "bread and cheese." Very sad! He sent me his photograph in his doctor's gown, and I was glad to hear he had left the "Flappers," and was making a living as a music-master.

I give this trivial incident as an illustration of "ups and downs" not uncommon in my own profession. I knew a young barrister who was driven to such straits that he used to ply as a porter in Covent Garden at the early market, but who kept his secret for a long time, and was too proud to borrow even a shilling from his fellow-members of the Inn.

But to continue, taking a short cut eastwards from Leicester Square, Maiden Lane was reached in a few minutes. Here was one of the "Caves of Harmony," y'clept the Cider Cellars, kept by one Rhodes. It was a capital supper-house, where you got an excellent broil, cooked to a turn, with baked potatoes served in their skins. Although no charge was made for admission, the place was fairly select. The entertainment was not of a high order, but amusing, comic songs were the principal element. Some of these were over-savoury, but most of them innocuous: ballads such as "Barbara Allen," "Billy Barlow," "Pretty Polly Perkins of Paddington Green," and "Lord Lovel." One song caught the town, "The Rat-catcher's Daughter," sung by Sam Cowell. Another singer was Moody, a great favourite, and in one of the night houses J. W. Sharp. There was no pride about these distinguished men and their companion vocalists. They would condescend to partake of the humble kidney or succulent sausage, washed down by a tankard of half-and-half at your expense, or sell to you their own songs, MS. copy, for half a crown, with their autographs attached. The young fellows of that day thought it a privilege to be noticed by these fore-runners of the "Giant Comique." But to be invited to the chairman's table, where he kept order with an ivory gavel, was an honour indeed.

I must not omit Ross, who had been an actor—a disappointed tragedian. He made my blood curdle with his "Sam Hall"—not quite a song, but the words given in a monotone as in a dirge. I note Serjeant Ballantine was much impressed by it. It was supposed to be given by a man sentenced to death, and in the condemned cell. He is making, so far as I remember, a confession of his career of crime and bloodshed to the prison Ordinary. Not the humble confession of a penitent, but the defiant statement of a hardened villain, who leaves his curse to those who had tempted him to crime. Each verse ended with a horrible refrain, in which they were consigned to perdition. It was gruesome, but lifted by the artist to the level of tragedy. Another night house was the Coal Hole, much the same sort of entertainment as at the Cider Cellars, but "more so."

CHAPTER V

LIFE IN LONDON (*continued*)—"EVANS'S"

EVANS'S soared far above its rivals. This was Thackeray's "Cave of Harmony," and was much affected by the young swells of the day, and by not a few of their seniors. Sometimes the audience would be almost distinguished—young senators and old ones even dropped in when the House adjourned early; the "men about town," poets, novelists, artists, and playwrights elbowed each other. Tragedians and comedians, who, having entertained their houses and doffed the buskin, were there to be entertained. Managers exchanged notes of "advance bookings," not very cheerful in those days. Limbs of the law, students, lay, legal, and medical, made up the motley group. Conviviality—*bon camaraderie*—Bohemianism were the order of the day, and in rooms graced by paintings of no mean merit, with a fleecy cloud of cigar smoke wreathing up to the ceiling, the clatter of plates, knives, and forks, and the popping of champagne corks—a scene was presented of brightness and sparkle which is now, alas! a scene of the past. There were two rigid rules: No pipes were allowed—the cigarette had not then found vogue—and no women were admitted.

The house was situated within the precincts of the Convent Garden, which originally belonged to the abbot and monks of Westminster, and the hospitable host was Paddy Green. In my mind's eye I see him now visiting the tables of his patrons with his open snuff-box, from which I have often taken a pinch of Prince's mixture—receiving me with his

general salutation: "My boy—my *dear* boy." Always gay and genial, with a quip for one, a sly joke for another, he was the personification of good-humour. His henchman was Herr Von Joel, who, for long services, was permanently retained on the premises. He had the privilege of purveying the cigars, and while you were making your choice would borrow your "Malacca" and use it as a flute with melodious effect, and on occasion the guests would be called to attention by the chairman's gavel, and Von Joel would fill the room with the song of birds. A special feature of the entertainment was the performance of a band of youthful choristers—glees, madrigals, catches, choruses, anthems, and even Gregorian chants were warbled by their sweet young voices—but, poor little chaps, how white and pallid they looked about one o'clock in the morning! Skinner, the head waiter, was a character; no account was taken of what you had consumed, but his manipulation of figures, in making up your bill, was marvellous. He put down what you told him, speaking in a rapid patter somewhat in this fashion:—

"Good evening, sir; haven't seen you lately. Yes, sir, chop and kidney, one and four; baked potato, threepence. Yes, sir, one and ten. Mr. Moody was in great form to-night, sir. Pint of claret? Yes, sir; one and six—three and ten. Rabbit? Yes, sir; Welsh rabbit, sixpence. Nice song that, sir, 'When the winds and the waves and the waters did roar'—four and six. Go of Scotch whisky? Yes, sir. Mr. Joel looks well, sir—eightpence—five and four. Bread and butter, tuppence only, sir—five and six. And the waiter, sir. Thank *you*, sir," as you hand him six shillings and get no change.

Poor Paddy, after making a fortune, lost it by rebuilding his premises. The new Home of Harmony was a failure from the first. It lacked all the snugness and charm of its predecessor; it was neither Evans's nor music-hall. He even admitted ladies—but only to a gallery behind a curtain screen, where they could hide their blushes. The venture soon collapsed. The Falstaff Club had a short

life in the premises—now occupied by the National Sporting Club.

There were a good many essentially night houses, among others, Kate Hamilton's, The Pick, and The Finish, but they were too rapid for me, and I never visited them. Of chop-houses an abundance; one was Stone's, still in Panton Street, then much patronised by the literary fry. The conversation was usually general, and there you heard the latest "on dit" of literary and dramatic circles.

Simpson's was also a feature, with its round table, and in the same building a *café*, where the best players in the world played chess.

Of the opera houses I had pretty well the *entrée*. Among the celebrities I heard Mario and Grisi, Lablache, Jenny Lind, Alboni, Piccolomini, Titiens, Giuglini, Patti, and many others. There was one young singer who, but for her sad fate, would have equalled the great Adelina—Agnes Bury. Her "Amina" in *Sonnambula*, both for charm and vocalisation, was perfect. Unhappily, she had lost the sight of one eye, and when success seemed assured she became totally blind; this affected her reason, and she died in an asylum, as also did poor Giuglini. Operatic ventures in those days were not very successful financially, especially when three houses were running.

At one time Covent Garden Theatre was derelict, and was taken by Anderson, the Wizard of the North. Even conjuring did not succeed, and the Wizard finished up his season by two *Bals Masqués*, to the latter of which I put myself to the expense of going. On the night of March 3, 1856, I made my way to the house of Messrs. Simmons, the costumiers in Tavistock Street, to get a dress. The firm was much patronised by amateurs. Mrs. Simmons, a very interesting woman who knew almost every prominent actor and actress in London, soon found me a becoming costume, and having dressed there, I started in a four-wheeled cab as, clad as I was, I scarcely liked to venture the short distance on foot. I found at once we were attracting some attention—boys were following, shouting at a big baboon

which had clambered on to the roof of the cab. The scene inside the house was brilliant enough, but I sickened of it and left about two in the morning. Some hour or so afterwards the theatre took fire, and the late papers recorded that Covent Garden Theatre was in ashes. Its ending was certainly not a "Blaze of Triumph."

I have mentioned some of the Italian singers. I must not omit our great English tenor, Sims Reeves, who appeared one season at Covent Garden, I think. I saw him in *Masaniello* and *Fra Diavolo*, and highly dramatic performances they were. His voice, though not powerful, was perfect in quality, and he knew how to act. Mario and Giuglini were mere sticks as actors. English opera had a fairly good run, aided by Louisa Pyne and William Harrison. I saw them in all Balfe's operas, of which the "poet" Bunn was the librettist. Their great success was in *The Bohemian Girl*. It used to be the fashion to chaff Bunn for his numbers, but I have heard worse.

I was glad to have the opportunity of occasionally visiting Vauxhall Gardens, destined after its historic life to fall into the hands of the jerry-builder. I usually went when a fancy dress ball was given, but for which dress-clothes and domino were sufficient. Old Mr. Wardle, the proprietor, used to frank me. The gardens were much the same as they had been for centuries. The old trees still arched over the alleys where, in times gone by, the belles and beaux had wandered, and courtly phrases, and *sans doute* stolen kisses, had been often exchanged. I could picture the rank and fashion and see the beauty patches on the cheeks of the patrician fair ones. I could always draw on my imagination—a bank on which I have since had an overdraft. Then there was the Rotunda, with the little supper recesses and the glades and the bosquets and the variegated lamps. Why, it was only as far back as 1812, the year of our great victories, that the gardens presented a picture that outran "the fabulous description of Arabian story," when six royal Dukes of England met the nobility, youth and beauty of the three kingdoms, and the health of George the Regent was given,

and Mr. Taylor sang "The Prince and Old England for ever!"—and *now*, a wild crowd of low-class women dancing vulgar polkas and jigs in their tinsel tawdry finery. *O tempora ! O mores !*

The Surrey Gardens were more wholesome, frequented by the respectable traders of the other side of the water. Excellent concerts were given, and I once heard Sims Reeves sing there "My Pretty Jane" and "Sally in our Alley," and Jullien conducted the orchestra. Cremorne was as low class as it could be—very pretty, but given up to the "pests of London."

The theatres were my great attraction, and I have a vivid recollection of the actors and actresses. The little theatre in the Haymarket was the admitted home of comedy. I knew it when it was under Buckstone's management, than whom there probably was no droller actor: it did not matter what part he played he was always Buckstone, in the same way that Keeley was always Keeley. To see him act with Mrs. Fitzwilliam was a delight. Then there was Chippendale, unequalled in old men's parts; and Howe, so gallant and debonair; and at one time the younger Farren, who could play "Sir Peter Teazle" almost as well as his father.

I saw Farren in *The Overland Route* at the Haymarket as "Tom Dexter." At his decease last year (1908) there was some controversy in the papers between a correspondent and Sir Squire Bancroft, the latter asserting Farren had not played at the Haymarket in that play. The piece was produced in 1860 with Charles Mathews as "Tom Dexter," but there was a revival in November, 1865, Charles Mathews being that year a member of the St. James's Company. Mr. and Mrs. Charles Mathews returned to the Haymarket on October 4, 1866, when *The Overland Route* was again revived. It may be that Farren was in the 1865 revival. I certainly saw him play the part of "Tom Dexter" at the Haymarket.

There was also James William Wallack, of whom I have spoken, unequalled in *The Brigand* as in *Don Cæsar de*

Bazan, and, among many others, Compton. His style was somewhat after that of an old stage veteran, Harley, whom I saw play "Cox" to Buckstone's "Box" at the Lyceum, with clever Mrs. Macnamara as "Mrs. Bouncer." Compton, off the stage, was a very grave-looking gentleman, tall and slim. He affected a clerical garb—good black broadcloth, a somewhat high waistcoat and a white tie. I heard a story of him, which I have not seen in print, although it may be ; if not, it is worth saving.

It is related that when Compton was on tour he one day went into the principal hotel of the town in which he was about to play. This conversation took place between him and the waiter :—

"Waiter," said Compton, somewhat rolling his words, "have you an ordinary here?"

"No, sir," replied the waiter, eyeing him carefully and coming to the conclusion he was a cleric ; "but the bishop of the diocese, sir, is entertaining his clergy at lunch, and if I might take him your name, I am sure, sir——"

"By all means," interrupted the actor. "My name is Compton."

Away went the waiter, and in a few minutes returned with a message. "The bishop would be delighted if Mr. Compton would join them." Up went Compton, and as his appearance and manner were irreproachable, he was warmly welcomed and seated next the bishop. Lunch had just been laid when the bishop said, "Our stranger guest will now kindly say grace." This was a poser. To say grace was not habitual to him. He was nonplussed only for a second, and rising with the rest of the clergy, he said in a clear, cathedral voice, "O Lord, open thou our lips, and our *mouth* shall show forth Thy praise!" The story, unfortunately, ends there.

I had the pleasure of seeing Charles Mathews and Mrs. Mathews on the first night, I think, of that lady's appearance in London. The house was the Haymarket and the play *London Assurance*. Charles played "Dazzle" brilliantly, and Mrs. Mathews "Lady Gay-Spanker" spankingly. Of course,

her performance was not equal to that of Mrs. Nisbett (Lady Boothby), whom I had seen in the same house and character, but it was highly meritorious. We only get one Nisbett in a century, apparently!

The old Adelphi was not much of a house in decoration; people used to be satisfied with what was on the stage. In my early teens I saw there that wonderful woman, Mrs. Keeley, as "Jack Sheppard." She made the character so fascinating that an attempt was made to stop the play, as it was feared that housebreaking might become attractive to the gods in the gallery. I can see her as the idle apprentice, poised on a pair of steps, carving "Jack Sheppard" on a beam in old Woods's workshop. I almost became a young thief myself, as I appropriated for home use her song beginning "In the box of a stone jug I was born—all forlorn—fake away." I am not sure of the words, but the refrain, "Nix, my dolly pals, fake away," became a nuisance to my people, and oddly, decades afterwards, I became *confrère* with her son-in-law, who was sometimes called "The Thieves' Counsel." I refer to my dear friend Montagu Williams, who, when an actor, made the acquaintance of Louise Keeley and married that delightful actress.

Any one who desires to know further about the Keeleys, let them read Montagu Williams's evergreen book, *Leaves of a Life*. I saw Mrs. Keeley also as "Topsy" in *Uncle Tom's Cabin*, and, together with her husband—probably the funniest actor in his style since Liston—in *The Christening*; then, in *Jack Sheppard*, there were genial Paul Bedford, little Wright, and O. Smith, who was always the villain on the stage, but a meek and mild gentleman off it.

There were a series of what may be called "Adelphi pieces," pure sensational dramas, which now seem to have died out. Foremost among them, *The Green Bushes* and *The Flower of the Forest*, with Madame Celeste, whose broken English was so musical, and Miss Woolgar, with her slim, graceful figure, and at one time, I think—I write *dubitanter*—the superb Miss Farebrother, who married a Royal Duke. Though very sensational, I doubt whether anything could

be done now better than *The Colleen Bawn*, in which I saw Dion Boucicault as "Miles-na-Coppaleen," Miss Woolgar as "Anne Chute," and Edmund Falconer as "Danny Mann." Boucicault's brogue was full of tenderness and his acting perfect. I think that but scant justice has been done to the memory of that clever man, novelist, playwright, and actor. We remember that Sheridan gave us *The School for Scandal*, but forget that Boucicault gave us *London Assurance*.

At the Adelphi I saw Jefferson in *Rip van Winkle*, which had an enormous London success. Much later on playgoers had the opportunity of seeing Mr. Tree as "Rip"—an excellent and conscientious performance, but lacking the naturalness which so distinguished Jefferson, who was condemned to play the part for life, like Sothorn, who became the martyr of "Lord Dundreary" in the humorous rôle of that very eccentric nobleman. I saw Sothorn play the character at the Haymarket. He was one of the amateurs of my time and used to affect a little house, the Cabinet, at King's Cross, where I played "Goldfinch" in *The Road to Ruin*.

Benjamin Webster, who for some time was manager-lessee of the Adelphi, was undoubtedly one of the finest actors of the early Victorian period. I remember him best in *The Dead Heart* and *Masks and Faces*; as "Triplet" in the latter play no subsequent actor has been able to equal him.

The Lyceum was a more fashionable house, with Madame Vestris as its presiding and extravagant genius. Burlesques were staged with much splendour—*The Golden Branch* one of them. I recollect seeing Charles Mathews as a Greek Chorus; he was exceedingly diverting, but it was out of his line. While he was one of Madame's company we had a succession of his delightful patter pieces. There was usually a farce to finish at this, and also at other houses. Writers now seem to be too proud for farces; as a fact, they write farces and wire them out to what they call plays.

In the year to be remembered—1863—when the land of the Vikings sent us their bright jewel to be set in the hearts of our people, the theatres, on the occasion of the marriage of

the Danish Princess with the Prince of Wales, were thrown open. On that occasion I managed to get into the Lyceum Theatre. I there saw Fechter for the first time; the play was *The Duke's Motto*. I subsequently saw him in *Ruy Blas*, but in that character he did not approach the standard of Mounet-Sully, who in London and also in Paris I saw with Sarah Bernhardt. I had the advantage of hearing the Divine Sarah in *Phèdre* and other plays. While writing of French artists I recall Aimée Desclée in *Frou-Frou* at the Princess's Theatre, sweetly pathetic; she could draw "iron tears" from "Pluto's cheek."

The genius of the Olympic was little Robson, who, had it not been for his physique, might have been the tragedian of the day; as it was, he was compelled to burlesque tragedy, but while he convulsed you with laughter he could move you by his tragic force. While he was playing in *Medea*, a travesty, I recollect Madame Ristori, the great Italian actress—the great "Medea"—went to see him, and, it was said, expressed great admiration of his acting. I only saw her once—in *Queen Elizabeth*. In his comic parts he was capital—"Villikins and his Dinah" and "Sampson Burr" in *The Porter's Knot*, &c. His short career ended in a veritable *dégringolade*; he forgot his words and sometimes—but that was funny—used to walk to the prompt side and ask for them.

At the Olympic I saw Gustavus V. Brooke, a robust tragedian who went down with the *London*. Later I saw the now veteran Henry Neville—he wants no praise of mine. When he was playing in *Clancarty* I went one night behind the scenes and into his very beautiful dressing-room. I met him at the house of my old friend William Coenen, the eminent pianist, who, as the "one-hand player," astonished the town. With his left hand he would play the most difficult sonata, while in combination with the other he was one of the best pianists of the day. At Coenen's I heard Neville recite Buchanan's poem *Fra Giacomo* admirably. I fancy actors are not always good at recitation. I recollect an instance of the breakdown of a great one—Mr. Beer-

bohm Tree—a clear case of stage-fright ; it was at a set-off supper given to Charles Dickens the younger, whose father, by the by, I saw play in a piece by Wilkie Collins—*The Lighthouse*, written for Tavistock House. The tables were crowded with actors—a critical audience ; among others, Tree was called upon to contribute to the harmony of the evening. He rose majestically, cleared his voice, and, the attention of the company being riveted upon him, commenced a simple story of one little Jim. Before he got through a couple of verses he was in distress ; he stammered—he, who could go through a part of any length without a fault, had lost his words ! Willard, who was next him—also a friend of little Jim—attempted to prompt him. This made matters worse, and the great tragedian dropped into his seat, nonplussed. He was up again in a moment, reciting with vigour *The Garden of the King*, which a few hours previously he had given in *The Ballad Monger* at the Haymarket.

Among some actors I have known I should like to mention Frank Wyatt, whose absence from the London stage is so much to be regretted. He must have been a very young man in 1884 when he first distinguished himself as “Dick Swiveller.” A man of good family, he probably took up acting as a pastime and then adopted it as a profession. He came to my chambers one day to borrow some briefs for use in a piece he had written on a divorce subject. I was able to supply him from a small store of old derelicts. He produced the play in the provinces, and to make things go put a short advertisement in the papers—“Wanted, a co-respondent.—Apply at the Theatre Royal, Eastbourne, on Wednesday, Aug. 7, at seven o’clock.” On that day and hour there was a long queue of people making their way to the box-office. It looked like a crowded first night, but nearly every man and woman was a dead-head ; typists, shorthand writers, scribes, and amanuenses seemed to have gathered from all parts—the very finest choice of correspondents, but not a *co-respondent* among them. However, the piece was a success, and the mistake did no harm. One of his best parts was the gay pilferer in *Erminie*.

I have wandered somewhat from the business of this chapter, but return to duly finish it.

I have already spoken of the Princess's under Charles Kean's management, but Ellen Tree, who became his wife, must not be left out of the rank of distinguished actresses.

Opposite the Princess's was the Pantheon, a very high-class bazaar, which had been a theatre and which looked down on its sister of Soho. The Pantheon now is a Temple of Bacchus—the wine establishment of Messrs. Gilbey. On the other side of the water there was the Victoria, where I heard that brilliant vocalist, Miss Romer, and the Surrey, where Creswick reigned supreme, assisted by Shepherd.

I must not trespass further on the patience of my readers who have struggled through these recollections. All I can hope is that, with some, they may revive pleasant memories of the past and to others afford an insight as to what that past was, in the area to which it was confined. My book must, so far as part of it is concerned, be accepted as one of gossip and sometimes of nonsense; but "A little nonsense now and then is relished by the wisest men."

CHAPTER VI

A FEW REMARKABLE MEN

I CAN only find space for a few of the men I have known outside the men of the Bar, but I cannot omit one of my oldest friends—Archibald Forbes. I met him at a picnic, before he had quite become the great war correspondent. He was like a boy out for a holiday, and I soon found he had a fine capacity for not only enjoying himself, but making other people enjoy. The acquaintance thus casually made, ripened, certainly on my part, to a friendship I enjoyed for some decades. His early life and his almost puritanical training—which he did not relish; his enlistment in the army as a private soldier; the curious incidents which brought him in connection with the proprietors of the *Daily News*, and his career as their representative in the field, must be left for another pen; suffice it, that he was a soldier—at heart a man of indomitable courage—possessing the highest endurance, which he taxed to the utmost, and with a power of graphic description that raised the fortunes of the paper with which he was associated for so many years. Whether at home or abroad, always popular—modest and reticent, as to his dashing deeds—a good companion and a kind friend. It is with the man only I have to do.

I recollect on one occasion Forbes creating a sensation. It was after the Zulu War, in which he made his famous ride. He accompanied my wife and myself to a fancy dress ball, given by some friends of ours at their house in Portland Place. He came to our place first, and we took him on. We scarcely knew what to do. He was clad as an African chief

—which means he had very little on besides war-paint and feathers. Our hostess looked somewhat alarmed when we presented him, but, of course, the great Archibald was such a lion that the eccentricity of his attire was waived, and he came in for a good deal more observation than he bargained for. Happily the rooms were very crowded. With the last remnant of propriety which was left to him he declined to dance or even to sit down. I think it was just a little bit of his devilry.

In his own home he was most hospitable, and you were sure to meet interesting people. Forbes talked very little when he entertained professional guests, but left them to talk—*of themselves*—a not always interesting foible; but to have Forbes all to yourself was a treat.

Just after the Servian War in 1876, I had a nocturnal visit from Forbes. I happened to have staying with me at the time a young Russian of the name of Hoth, whom Forbes knew, an ardent big game sportsman who still brings down his quarry in the field. My people were out of town, and Hoth and I had been sitting up late, smoking and talking about Eastern affairs; the servants had gone to bed. There was a loud knock and ring. "See who it is," said I to Hoth. In a moment I heard a shout, "It's Forbes!" and there he was, and a pretty figure he looked. He had only just arrived, and he had come straight to us, and was in the clothes (what was left of them) which he had on when he made his rapid run back to England; he had not an ounce of luggage. What a night we had! I do not know how many bottles of claret we drank or how many cigars we smoked, but I do know in three hours we had the whole Servian campaign described in the most graphic fashion. It was a night to be remembered.

I met Edmund Yates once at an "evening" Forbes gave. Forbes was just back from India. He had arranged a little entertainment for us. An old campaign friend of his, dressed as a high caste Indian, entered the room, bearing trays of jewels. These, with salaams, he placed on tables and offered

each lady the choice of papers on which the number of each prize was supposed to be inscribed. These were collected and the Hindoo retired. On his return the prizes were distributed—not, I fancy, in order of selection. Mrs. Edmund Yates secured some very handsome jewels, my sister-in-law, now wife of that eminent counsel, Mr. Herbert Reed, some pretty ornaments, and all the ladies were satisfied with appropriate gifts. I should think that little caper must have cost Forbes £100 at least; but when he had money he was very lavish.

Edmund Yates did him a very ill-turn. Yates was starting a new journal—I forget the name, it had only an ephemeral existence—and he induced Forbes to write an article reflecting upon the Queen, I fancy in regard to Indian matters. Her Majesty liked Forbes, and he used to have the Royal command to go to Windsor after most of his campaigns. He has given me very interesting accounts of some of the interviews he had with the Queen and her graciousness to him. In a moment of folly, from which Yates ought to have safeguarded him, he wrote the article. The result was fatal—the Queen was angry and never forgave him. His future prospects might have been rendered brilliant with the Queen's favour and patronage.

Well, the poor fellow, once wearing her Majesty's uniform as a common soldier, lies under the same shade which shelters the body of Wellington.

“Now are our brows bound with victorious wreaths,
Our bruised arms hung up for monuments.”

If any of my readers who knew little of Archibald Forbes would like to know more of him, I should recommend them to read *Pictures of Many Wars* and *Peaceful Personalities and Warriors Bold*, both by one Frederick Villiers, the bosom friend of Forbes, his henchman, and, I am glad to say, my very good friend.

The affection which existed between these two men was remarkable—they were Damon and Pythias—save in age.

It was Forbes who took the young artist by the hand, who helped and encouraged him on many a battlefield, who was more than brother to him.

I recollect many years ago visiting Villiers' studio at Primrose Hill, and from the work I there saw I pictured a future academician; but the roving spirit was in him, and his knapsack always ready packed, to be off at an hour's notice to the fields of battle and of danger, to portray with his pencil what his great companion was portraying with his pen. The pages of the *Graphic* were enriched by his marvellous war sketches, and to his accomplishment as an artist he had the gift of writing and could ably describe the scenes he depicted. Further than that, as a lecturer he has delighted and still delights his audiences by fighting his battles over again. I saw him recently at the Arts Club and was glad to find him very fit, but still with a hankering after the old leaven. I expect the knapsack is ready, and that he is only waiting for another campaign.

To the war correspondents whom I have met, I add Kinglake, the great historian of the Crimean War. I only knew him a few years before his death. He was a most courtly man—with that old knightly manner which has gone out of fashion, full of graceful gallantry even in trivial matters. I recollect when my two daughters were quite little girls, their going to a children's party, on which occasion he sent them two lovely bouquets, which made them very proud: a mere triviality, but worthy of the kind heart of the author of *Eothen*.

I had the pleasure of knowing Sir Julius Raines, whose loss has recently (1909), been deplored. A fine hero-soldier, and most genial, hospitable gentleman. He had a valuable and appropriate collection of military medals. His mid-day "tiffins" were delightful, and Lady Raines always the best of hostesses.

I was introduced by Messrs. Baxter and Co. to a great veteran and hero, Lord Strathnairn, who, as Sir Hugh Rose, must have been a singularly handsome man; at one time I was a good deal in his society. One of his failings was

extreme penuriousness. Some litigation was the origin of our acquaintance, and resulted in a visit to Leeds, where we spent several days on a reference arising out of a dispute between his lordship and his land agent and steward. It was dull and prosaic, but enlivened one day by a passage of arms between the litigants. Lord Strathnairn was an extremely violent man, and in a fit of anger had thrown a bottle of ink at his agent, deluging him with the fluid. On this being recounted, both parties looked as if they would like to begin the fray again, but I threw oil upon the waters by reminding them "After all it was only an affair of *Ink-a-man*." We got on very well after this.

I will devote the rest of this chapter, except a few lines, to Sir Augustus "Druriolanus," otherwise Gus Harris, one time sheriff and knight of good fellows.

The occasion of our acquaintance was not one of unmixed satisfaction to him. At the time he was manager of the Palace Theatre, and in his lavish way had dispensed most of the shareholders' money in costly and unremunerative productions. Empty benches and an empty exchequer faced the shareholders, and to wind the company up seemed almost imperative.

A committee of investigation was formed to look into affairs and advise whether the company should go into liquidation or be reconstructed. I was appointed one of the committee. For about a fortnight we worked diligently; afterwards, I think, I could have passed an exam in the value of the dresses of the *dansesuses*. We found that there had been extravagance everywhere. Harris himself drew £2,000 a year, although at the time he was running Covent Garden and Drury Lane. We had to worry him, and one day he said we had birched him as if he were a schoolboy. I must say he took his beating manfully, and retaliated only by throwing opera boxes at us. One day we dined with him at the house dinner of the Green Room Club. He presided, and, in his usual generous way, supplied the champagne for all the members dining, as well as for his guests. At that time I should say no man worked harder than poor Gus.

The committee made their report and advised reconstruction on certain conditions, the primary one that Harris should cease to be manager. The shareholders adopted the report. Harris resigned, and Charley Morton reigned in his stead. We know with what result—the Palace Theatre is now a great success.

Harris gave a night *fête* at his pretty house and grounds at St. John's Wood, at which I and my family were guests. He showed no rancour ; that was his mode of paying people out. The *fête* was rendered interesting by being given in honour of Mascagni. The Guards' band was present, and when about to play some of his music Mascagni took the *bâton* out of the leader's hand and himself conducted a selection from *Cavalleria Rusticana*, to the delight of the men and of us all. I was introduced to the young composer, and found him modest and unassuming—as most men of genius are. Sir Augustus Harris will always be remembered as the most popular man in the profession—genial, charitable, full-hearted, he overflowed with the milk of human-kindness, and was "a true-hearted Mason."

The appointment of Mr. Morton revived my acquaintance with dear old Charley ; he was almost a veteran then. As the pioneer of music-halls—the first of which he instituted in 1855, the Canterbury—he was not an over-fortunate man. He was the owner of the Oxford, which in 1868 was burnt down. He lost a small fortune in the States. For many years he was manager at the Palace Theatre, where he finally settled down and ended his useful life.

He started, with the co-operation of the Palace directors, on the principle that on the stage there should be nothing which should shock the most sensitive mind, either by vulgarity or indecency, and that before the curtain there should be rigid supervision as to the decorum of the audience.

Morton was like a general. It was known that his orders must be obeyed ; but what he did was tactfully done. I have seen young swells, who were conversing loudly, talking during a turn, reduced to silence by a polite message : "Mr. Morton will be so much obliged if you would kindly not

“speak *quite* so loud.” His eyes were everywhere ; the comforts of the audience must be studied. He indulged in the minutest detail, even to touching the cup of coffee one of the liveried menials was bearing to the stalls, to feel whether it was properly hot. There he was day and night, working, slaving, and yet looking cool and collected, chatting with professionals, having his modest cup of tea and a biscuit, until the last day of his attendance. The Palace soon began to prosper. When at last the dear old man died, Mr. Alfred Butt gathered on to himself the mantle of Elijah. His success has been so great that it would be superfluous to say a word about it.

A remarkable man, whose introduction to me as a client resulted in more than mere acquaintance, was “George Griffith,” the novelist. I knew him first as George Griffith Jones, who under the *nom de plume* of “Lara” had written a good deal of that class of poetry which one writes in one’s youth and regrets at one’s maturity. A small volume of his poems was published by J. Stuart Ross, more familiarly known as “Saladin,” the proprietor of the *Agnostic News*, a very vigorous writer. My friend had run the gamut of religious or irreligious conviction and had written his book under the influence of Atheism. He had just gone over to Rome, or was thinking of so doing, when I was instructed to apply for an injunction to restrain Mr. Ross from further publication. I am glad to say that I succeeded, as the book, though clever, was distinctly blasphemous. The young author, having sacrificed his bantling, happily drifted into the legitimate groove of letters, and obtained a footing in the great house of Pearson. I recollect his bringing me to my chambers a copy of his first novel. I had practically lost sight of him. We chatted about old times, his connection with Charles Bradlaugh, whom he had pilloried in a brochure called “The Bounciad,” in imitation of Pope’s “Dunciad,” and other matters. In the course of our conversation, I said :

“I think, my friend, you were originally a member of the Church of England, and duly confirmed?”

"Yes!"

"By a somewhat violent *volte face* you became an Atheist?"

"Yes!"

"A form of disbelief you subsequently modified as an Agnostic?"

"Yes!"

"Dissatisfied with Agnosticism, you essayed Rome, were subsequently dipped as a Baptist, and eventually became a rigid Presbyterian?"

"Yes! Yes! Yes!"

"May I ask what you are now?"

"*I am a journalist.*"

CHAPTER VII

CALL TO THE BAR

I ENTERED as a student at the Middle Temple on April 13, 1871, was duly called to the Bar in Hilary Term, 1874, and joined the Home Circuit in the same year.

I attached myself to, without joining, the Parliamentary Bar, but as my first session only brought me the "Beverley Water Bill" as junior to Mr. Denison, in which, as a detail, I did not get my fees, I drifted into general practice. My old profession stood me in good stead, and I was soon in compensation cases arising out of compulsory taking of lands, references, and sanitary schemes. I also got my share of Nisi Prius work. I jumped quickly into practice; my scientific knowledge served me. I represented the now Borough of Ramsgate in matters arising out of the drainage of that town, Broadstairs, &c.; but these matters can have no interest to the general reader.

The fascination and attraction of Nisi Prius allured me from more solid work. I was fond of publicity; I liked an audience, and the dreary, dry-as-dust work of reference, save for the fees connected therewith, was far from my taste. Before I was called, I happily found a *locus* in the chambers of Mr. Warner Sleigh, at 2, Middle Temple Lane, of which, on his vacating them, I became the tenant. There I practised for thirty-five years. Of Mr. Sleigh, a most erratic genius, I shall further on have something to say. Called with me were the now Sir William Jameson Soulsby, so well known as the perpetual secretary of the Lord Mayors of London; Cavanagh, a good lawyer and text-book writer; and The O'Clery.

In this chapter I deal only with the playtime of the Bar, and that briefly. To attend Commons was always to me a pleasure. Apart from the good dinners and wines, there was always the charm of intellectual conversation; no deep philosophy, but wit, and sometimes wisdom. The men then messed in fours as they do now, but the table arrangements were somewhat different. Each mess had its separate joint, and after satisfying the hunger of the quartette either of the four could claim the remnant by placing his fork in it. This was very convenient to members who lived in the Inn, as they got half a joint for a song. Now, the joints, of which there is a choice, are carved in the ordinary way at a side-table. The dinner is the same, whether at the Bar or Students' tables, with the exception of what used to be the Senior Bar mess, now the Ancients' Table, comprising the eight senior men in the room.

At the Ancients' Table I had, in my late years, the opportunity of enjoying many a good dinner, with a *menu* worthy of a West End restaurant. This, with half a bottle of good port or a bottle of Bordeaux or other light wine, with the addition of one of champagne on state occasions and an occasional loving cup, was franked for the sum of two shillings. The wine-glasses have not varied for many centuries—they are small, and run thirteen to the bottle. This gives the thirteenth glass to the captain, but the privilege is seldom exercised.

The scene at night, at the Middle Temple Hall, is somewhat brilliant. At the further end of the noble building the Hall is crossed by the table of the Benchers—the Masters of the Inn—presided over by the treasurer, who, after three preliminary taps by the head porter, says grace before and after meat. On grand nights the Master of the Temple says grace. On these occasions the most distinguished men are guests: royal princes, statesmen, eminent clerics, poets—in fact, the pick of the nation.

Our gracious King can never be our guest, although His Majesty honours us with his presence. He is a mere barrister-at-law—a member of the Inn and our Senior Bench.

Laterally is a smaller table, that of the Ancients; its silver utilities the presents of old members. One of the great supporters of this table was the popular and genial Mr. Brogden, whom we lost through his being raised to the Bench of the Inn—although a stuff gown man. This table possesses a silver snuff-box. The silver of the Inn, in cups and salvers, is a most interesting and valuable collection. The tables for Bar and Students run the whole length of the room, backed by old oak panels containing the armorial bearings of past “Lectors” and others. There is only one panel with a name without arms—that of a celebrated Parliamentary counsel, Charles Austin, who either had no coat or objected to display one.

The Hall is well lit by side flambeaux and central lights, showing up the fine roof—the magnificent equestrian painting of Charles I. by Vandyck backs the Benchers’ Table and has its special lighting. It is flanked by portraits of Queen Elizabeth and Stuart kings and queens. On the walls are suits of armour, but whether ever worn by the Knights Templar history sayeth not.

The scene, when the Hall is full, is one of animation. The Benchers enter and make their exit in processional file, the men standing. On state occasions the healths of the King and Queen are drunk—there are no other toasts, except on rare occasions. Sometimes the attendance of the Benchers is limited. If there be no attendance the Senior Ancient reads grace; if there be only one, then is the Ancients’ time. The Bencher dines in solitary grandeur, but sends them his compliments, inviting them to wine with him in the Parliament Chamber. This is the coveted moment, and the wine of the table is sent to the two Senior Bar messes, for are not the eight old men going to enjoy the finest wines of the Middle Temple cellar? In due course, processionally, the Ancients leave the Hall—the envied of all, and sometimes with ironical cheers. They pass through a beautiful corridor adorned with paintings and works of art, and find themselves in the Parliament Chamber, on the walls of which is a portrait of the King in his Bar robes and many portraits of distin-

guished judges. Laid out is a *recherché* dessert. The Bencher has asked another guest, who acts as his Vice. The wines which pass round freely are of the finest vintage, and the conversation soon gets lively ; liqueurs follow—about twenty varieties—handed round in a basket by one of the servants, cigars, cigarettes, and a cup of coffee. The Ancients have had good value for their two-shilling dinner ticket.

Such, practically, is the recreation-time in London, but on circuit there is, or was, the more enjoyable experience. I continue in another key—with a very short sketch of circuit life, extended by occasional notes in other chapters of this book.

CIRCUIT LIFE

In admitting the lay reader behind the scenes I hope I am not committing any indiscretion which may make me liable to fine or imprisonment. Circuit rules are very rigid ; I, however, speak only of my own. I had one experience of another. I happened to be at Newcastle one autumn assize, engaged on a reference ; this was within my rights, but I was, of course, a mere “ prairie dog.” I met Lockwood, who took compassion on me and invited me to the Bar mess, but I had to take a fearful oath that I would not divulge what I saw or heard. Save that I was treated with the greatest hospitality and kindness, I can say no more. Cave—afterwards Mr. Justice Cave—was then leader of the circuit.

To my mind nothing can exceed the delightful gatherings of the Bar mess, as it used to be on the old Home. Jaded with work or harassed by the want of it—how welcome the relaxation of an evening spent in a quaint old Bar Inn ! A well-spread table, your own private cellar of choice wine, matured and maturing, your selection a choice of comet ports, Johannesburg, Châteaux wines from “ Lafitte ” to “ La Rose,” champagnes of the finest brands, your old brown sherry and Madeira that has twice traversed the seas—and all for, save your dinner, 25s. for the whole Assize as wine contribution. The old Home was, however, a rich circuit. I understand

things are not now so lavish. Then the company, the play of intellects—wit matched against wit—repartee babbling round the table, *camaraderie*, *bonhomie*, in full play. Polished *équivoque* but never coarseness, song and recitation, and a rubber for those who desired.

I shall always remember with delight a typical evening when, after mess, a dozen congenial spirits gathered together in a cosy, wood-heated room at the Bar Inn at Chelmsford (then affiliated). There was John Day, our Senior, full of dry wit, of which he gave us the quality with the usual gravity of demeanour which earned him the sobriquet of Judgment Day, grave as a judge as he was to be, but letting off his sparkles to kindle the flames in others; Finlay, afterwards Attorney-General, not then Sir Robert, declaiming in fine, sonorous North-country tongue choice passages from his great countryman's "Marmion," and with a burst of power—

"‘Charge, Chester, charge! on, Stanley, on!’
Were the last words of Marmion."

Then Finlason of the *Times*—our old Fin—mimicking past judges, their voices, their mannerisms, and with racy stories told in his inimitable way. Then William Willis (now his Honour the Judge), bringing us back to decorum—Willis who, if he had lived in Milton's time, would have been his Boswell, and now, with a fervour which compelled our attention, giving us passage after passage from his favourite poet with, as a finish, in round, rolling voice, the description of our patron saint—

"High on a throne of royal state, which far
Outshone the wealth of Ormuz and of Ind,
Or where the gorgeous East with richest hand
Showers on her kings, barbaric pearl and gold,
Satan exalted sat, by merit rais'd
To that bad eminence——"

Then, to make things cheerful, I, a modest young junior,

venturing Hans Breitmann's lay of the Lorelei, "Der maiden mit nodings on"; and after other contributions from young wits, last, but not least, Teddy Clarke (Sir Edward) finishing up with a comic song of twenty verses with a rattling "Tiddle-ri-fol-de-rol" chorus, in which we all joined. Ah! those were days.

"Dulce est desipere in loco."

CHAPTER VIII

VICTORIAN JUDGES

I HAVE, and I hope with reason, concluded that it would be indecorous for me to comment upon any individual unit of those illustrious men who adorn the present Bench of Judges, and the counsel from whom they expect assistance in the administration of justice. I may be permitted, however, to say that they follow in the steps of their distinguished predecessors.

Criticism on my part would be impertinent and ungrateful, especially as, from every one of them, I have received some act of kindness. But even if, with my limited powers, I attempted to comment or criticise, the field for my labour would be so small it would not be worth the tilling. Collectively, there can be no objection to my referring to them. It must be remembered that there are two sides to the Supreme Court of Justice—the Common Law side and the Chancery side. As a Common Law lawyer, my book is devoted, almost exclusively, to the branch of which I am a member, but my present remarks must be extended to the Chancery judges, of whom it would be impossible to speak other than with respect and admiration. I can safely say that no country in the world possesses judges such as we have the privilege to possess. From the High Justiciar of England to the last puisne judge appointed, we have a whole—the embodiment of which is purity, dignity, learning, and justice: men who hear courteously, answer wisely, consider soberly, and decide impartially. We are proud to say that in our country a corrupt judge is unknown. The Bench is

truly honest and unbiassed. In years gone by we could scarcely have said so; perhaps the salaries then accounted for the corruption which existed, eked out by emoluments not always honestly earned—take the period of the great Sir Edward Coke and the salaries in 1616:—

	£	s.	d.
Sir E. Coke, Lord Chief Justice of England ...	224	19	9
Circuits	33	6	8
	£258 6 5		
Puisne judges of King's Bench and Common Pleas	188	6	8
Besides Circuits	33	6	8
	£221 13 4		
Chief Justice of Common Pleas	194	19	9
Chief Baron	188	6	0
Puisne Barons	133	6	8
Judge of Norfolk Circuit	12	6	8

The honorarium to counsel seems to have been also small. By an entry in the parish books of St. Margaret's, Westminster, it appears that in the reign of Edward IV. they paid "Roger Fylpott, learned in the law, for his counsel, 3s. 8d., with 4d. for his dinner." The value of money was no doubt much greater then, but compare with the present salaries:—

	£
Lord High Chancellor	10,000
Lord Chief Justice	8,000
Master of the Rolls	6,000
Chancery judges	5,000
Puisne judges	5,000
The Recorder of London	4,000

The puisne judges further receive a liberal circuit allowance.

We pay, therefore, well for our judges, who become also entitled to large retiring pensions. The Lord Chancellor may be only a year or more in office, and a change in the Government gives him £5,000 a year for life. That allowance was arranged by Lord Brougham—2 & 3 W. 4. c. 122—to whom the subsequent Chancellors may ever be grateful.

It is the fashion among some members of the Bar to say that we have not such a strong Bench now as in the previous generation. I heard that in the seventies ; I hear it said again. It is just the way in which we speak of present and past actors. Of course there were giants in the past, and comparison may be challenged. There may be no giants, but in my humble view, we never had a better working Bench than now. The powers and the merits of some must exceed the merits and powers of others—a question of intellect and degree, but not of mediocrity. Perfection is not attainable. The Lords Justices of Appeal will continue to reverse the judgment of puisne judges—the decision of the Appellate Court be dismissed in the House of Lords, from which there is no appeal save to the King, who, although a barrister-at-law and a Bencher of his Inn, is not likely to exercise his supreme power. The monarch, even, is not all-powerful ; he can never have the rank coveted in his profession—that of King's Counsel.

The judges of the day fully recognise their duties to the country. They work much harder than outsiders think who see them in court daily for five brief hours. Every day some intricate case remains part heard, bristling with legal difficulties—ample home work after business hours—notes of evidence to be gone through, summings up to be prepared, authorities to be looked up. The life of a judge must be a pleasant one, but it is not an idle one. When all legal work is done, some judges extend their sphere of usefulness by throwing themselves with energy into anything which will promote the good of the people, or the cause of charity, morality, or sobriety. One great judge is pre-eminent in this respect, and besides arduous work in another House, and the imperative calls of social duties, spends all his spare moments in works of benevolence. Such are our great men !

As to the distribution of work, there is much needs reform. It seems an absurdity that a costly judge of a High Court should have to try some trumpery case, while a judge of an inferior court is trying a case of importance. The extension of the jurisdiction of the County Courts has afforded great relief, but the present work of the County Court judges

—at all events in commercial centres—is too laborious. Their work has been doubled, and with great parsimony their pay of £1,500 a year remains the same. I think that the difficulty may be met by the establishment of intermediary Courts—in time we shall have them.

There is one complaint which suitors make with bitterness and reason—the law’s delay, owing to the long absence of judges on holiday, and, so far as London is concerned, the almost continual absence of some of them on Circuit. The latter is a scandal, or rather its consequences, and many hundreds of thousands of pounds come out of the pockets of litigants, completely thrown away, through the delay in getting their causes tried. The attempts which have been made by the judges to ameliorate this state of things have been, judging by the results, utterly inadequate—“Justice delayed is justice denied.”

In London there should be a Court of Justice of at least twelve judges, sitting all the legal year round. In the country equal facility could be given by the establishment of legal centres, and the appointment of Assize or travelling judges—not necessarily with the same salary as the judges now enjoy. Many able men would be tempted by £2,500 a year, paid monthly, with its certainty, and a retiring pension. Beyond civil matters, the trial of criminals who are not on bail would be expedited.

In regard to the judges’ holidays, I would not curtail them unduly—their work is anxious, responsible, and wearying, and the strain such that we frequently find them breaking down. No doubt they require long rests. Still the Long Vacation is a sore subject with the patrons of the High Court of Judicature—only to be coped with by a few judges sitting daily to try their cases. To this latter the Seniors, who have made their thousands on term and run away on the last day of it, would object, but it would give some of those who are not overburdened with work a chance. *A great country like our own should have its Courts of Law always open.*

In a rambling book like this it would be impossible for me to do justice to the judges, of whom space permits me to give

but a sketch. I desire merely to bring them back to memory, and as giving me opportunity of introducing incident and anecdote not perhaps wholly pertinent to the subject of the chapter. I am a wanderer throughout and seldom keep to the bridle-path. "Give me dates—dates!" Lord Chief Baron Kelly used impatiently to say. I give a few, but must not be held responsible for my chronology.

LORD CHIEF JUSTICE COCKBURN (1856–1880) was on the Bench when I first became a member of the Bar. He was the legal figurehead of his time. My sketch of this illustrious man is from mere observation. I had but trifling practice before him. He has been described as, "in his youth, a man of gaiety and gallantry, and in his mature age a politician and an orator." Of him Dr. Kenealy, lawyer, student, and poet, who, from his crass folly, lost fame and honour, wrote these lines of no mere panegyric—

"And I have seen a Court where every man
Felt himself in the presence of a gentleman,
Whose genial courtesy made all things genial,
Whose exquisite bearing captured all men's love,
Whose sun-bright justice brightened every cause
And sent even him who lost away content."

Those who had the privilege to hear him must have been impressed by his ingenious arguments. He was a true logician; his eloquence was captivating, his voice soft and penetrating. "Genius was written on his broad, clear brow"—as an orator brilliant, as a man urbane, as a judge just. Full of tenderness, he could on occasion be severe; his indignation was always righteous, his gentleness almost feminine; he was easily touched. I recollect, on the trial of Charles Bradlaugh and Mrs. Besant, how much he was affected, even to tears, by the impassioned appeal of the latter—but with honey in the mouth, the bee had its sting.

I remember, as if it were yesterday, his marvellous summing up in the Tichborne case, in which I was surprised to find my old amateur friend Dickins foreman of the jury. I felt great interest in it, as I was acquainted with "Tichborne," or "de Castro," or "Arthur Orton," or whosoever he was. Many

believed in the Claimant—I confess I did. I was younger then. I recollect once sitting by his bedside when he was ill—a sparsely furnished room, a large crucifix at the head of his bed, the burly man lying on his back. I was much struck by his manner, and, despite the errors of speech of a seemingly uneducated man, he was full of intelligence, his ideas well expressed, his voice soft, even melodious, his bearing that of a gentleman—he was a mystery.

On another occasion I breakfasted with him and the Dowager Lady Tichborne. It may be remembered that her son had been shipwrecked and presumably drowned. That he was dead Lady Tichborne discredited; she believed her son lived. She advertised freely for intelligence, and after many years the Claimant appeared upon the scene. At Paris she saw him and immediately recognised him as the long-lost heir. I may describe Lady Tichborne as like a charming picture of a little French aristocrat. In the days of the tumbril her very appearance would have invited the guillotine. She looked as if she had just stepped from a portrait panel of one of the *ancienne noblesse*. I am still convinced, from what I saw, that this gently cultured lady believed this man, big and burly, to be her son. His manner to her was more than remarkable—perfect; not of low-class familiarity or middle-class equality, but tenderly deferential, respectful, considerate, and courteous. In the room, though not at the table, was his wife, the daughter of an Australian brickmaker, uncultivated though unobjectionable. That he was the rightful heir I have long ceased to believe, but that he had Tichborne blood in his veins—who knows?

That Kenealy believed in him I have no doubt; he sacrificed himself for him with mad perversity. He was an advocate to Brougham's order. A man of position, high in his profession, highly cultured, a scholar, a lawyer, and a poet, he ruined all his own prospects by his foolish allegiance. Miss Kenealy last year [1908] wrote and published her father's Life and Apologia; in it she quotes the doctor's description of the Wapping butcher: "I never heard a vulgar sentiment or a low expression come from him; I never found

a word which savoured of Wapping; I never heard him give utterance to an idea inconsistent with the mind of a gentleman; I never saw the least assumption about him which could lead me to think he was playing a part. He was always easy, natural, simple. His affability and politeness were those not only of a well-bred, but even of a high-bred man."

My words seem almost paraphrase, but were written for another purpose long before Miss Kenealy's book was out—they have therefore the value of corroboration. Referring to Kenealy's downfall, it will be remembered by some that the advocate, in the course of a vigorous speech on behalf of his client, attacked and insulted both Bench and Bar. This attack profoundly affected Sir Alexander Cockburn, who spoke with the utmost indignation of the conduct of the offending counsel in the last words of a marvellous summing up.

Finlason, the *Times* reporter, reported the trial almost *verbatim*.

"I have heard language," said the Chief, "which I will undertake to say, in the whole annals of the administration of justice in these courts, no advocate ever before dreamt of addressing to a jury. When I say I heard it, I must correct the phrase. It had been spoken with bated breath. I must say that in the way the learned counsel came forward to insult this Court there is cowardice and insult combined."

The judge then read the offending passages from Kenealy's speech, and continued:—

"It would be idle to affect, or pretend, not to know to whom those observations, connected with the alternative of honour or dishonour, were addressed. Whose names are to be 'blurred and sullied' for the future? Is that the way in which counsel is to speak of the tribunal before whom he is pleading? Gentlemen, the history of this cause may be written by whom it may—I care not! I am conscious of having done my duty in it, and I can only say—

"'There is no terror in your threats;
For I am arm'd so strong in honesty,
That they pass by me, like the idle wind,
Which I respect not.'

But the history of this cause may be written hereafter by a pen steeped in gall and venom—a pen that may not scruple to lampoon the living and revile the dead. I have no fear! I have administered justice here now for many years. I cannot hope that my name, like that of the great and illustrious men who have gone before me, will endure; but I do hope that it will live in the remembrance—may I say the affectionate remembrance?—of the generation before whom and with whom I have administered justice, and *if* my name shall be traduced—*if* my conduct shall be reviled—*if* my integrity shall be questioned, I *leave the protection of my memory to the Bar of England.*”

Sir Alexander was proud of the Bar, to whom he appealed; his confidence was not misplaced—his memory will ever live untarnished and unblemished. Yes! he was very proud of his Bar, and in his speech at the banquet given in the Middle Temple Hall in honour of the great French advocate, Monsieur Berryer, he illustrated the high standard at which it should be maintained.

“Much as I admire,” said Sir Alexander, in responding to the toast of the judges, “the great ability of Monsieur Berryer to my mind his crowning virtue—as it ought to be of every advocate—is that he has throughout his career conducted his cases with untarnished honour. The arms which an advocate wields he ought to use as a warrior, and not as an assassin. He ought to uphold the interests of his clients *per fas*, and not *per nefas*. He ought to know how to reconcile the interests of his clients with the eternal principles of truth and justice.”

Such was the man, respected and beloved by all, and it is with sad recollection I recall the day of his funeral. We were neighbours in Hertford Street for some years, and when I saw the little coffin—which contained so much that had been great, all save the spirit which had flown—placed in the hearse, I confess, and without shame, that my manhood gave way.

Sir Henry Hawkins was one of the counsel in the Tichborne case, in which he distinguished himself. Mr. Plowden

tells a good story of him. A witness was cross-examined by him as to the antecedents of Jean Luie.

The witness said he knew Luie to be a married man, but his wife passed under another name.

Mr. Hawkins: What name?

Witness: Mrs. Hawkins.

Mr. Hawkins: What was her maiden name?

Witness: Cockburn!

LORD CHIEF BARON KELLY [1866-1880] was but little known to me save as a very courtly gentleman of the old style, with a soft voice and charming manners. As a young advocate he was great with juries. It is told of him (the story is also told of another judge), as illustrating his power, that a jury of Essex "calves" being called upon for their verdict, the foreman said, "We don't know much about the plaintiff, and we don't know much about the defendant, so we finds for Mr. Fitzroy Kelly." I have always heard him spoken of as a powerful advocate, and, as a fact, he was the rival of the great Sir Frederick Thesiger. When I knew him he was extremely precise as to figures, and could do nothing without dates. He so often said, "Give me dates," that at one time his court threatened to be one of Chronology rather than of Exchequer. When he was becoming very feeble he was much distressed by any sudden noise in court. This failing gives me opening for a case in point.

There was a somewhat eccentric counsel of the name of Wharton, who was member for Bridport—one of the Fourth Party and a great blocker of Bills. He was an inordinate snuff-taker, and in caricatures in *Punch* was always depicted with a big snuff-box and a huge bandana, in the use of which in court he made an unseemly noise. One day in the Baron's Court he had been extra vigorous, and after an explosion of unusual violence the poor judge, writhing, lifted his hands, and in a tone of pathetic expostulation, uttered "Mr. Wharton! Mr. Wharton!" The aggressor, thrusting his handkerchief into his pocket, said, "My Lord, I will retire to another place where I may blow my nose in peace."

I knew Wharton very well—we were members of the same club. He was noted as the “Poet of Pump Court”; but his verses were too much in the Rabelaisian style to be quotable. He was a fellow of jest. I remember being opposed to him in a cause before Mr. JUSTICE ARCHIBALD [1872–1876], of whom I should like to give a heading as one of the judges who was admired for his merits and esteemed for his manners. He was an extremely decorous judge, and anything like coarseness would trouble him.

My case was a simple one: a sack of grain had fallen from a crane on to my client, who was passing an East End warehouse—merely a question of “how much.” I had not seen my friend before, but he soon gave me a taste of his quality. Quip followed jest, and I was a sad victim of his personalities; my knowledge of the laws of evidence was ridiculed, and I was advised to take lessons from Fitzjames Stephen (afterwards Mr. Justice Stephen), who was then lecturing on the subject. He quoted Shakespeare, Milton, and other poets without apparent reference to my prosaic case; in fact, he fooled away the morning. At last the learned judge became impatient, and the luncheon half-hour having arrived, his lordship rose and, addressing Mr. Wharton, said, “We will now adjourn, and, Mr. Wharton, I hope you will take the opportunity of conferring with your friend, Mr. Crispe, and settling the matter out of court.”

Not he! After the adjournment Wharton kept up the game, but at last had to address the jury, and in the course of his speech, for every word of which I vouch, he said: “Gentlemen, I think it only courteous to the learned judge, to refer to the advice his lordship gave me to settle the matter out of court. That reminds me of a case, tried in a County Court, in an action for *detinue* of a donkey. The plaintiff was a costermonger and the defendant a costermonger; they conducted the case in person. At one o’clock the judge said, ‘Now, my men, I’m going to have my lunch, and before I come back I hope you’ll settle your dispute out of court.’ When he returned the plaintiff came in with a black eye and the defendant with a bloody nose, and the defendant said,

‘Well, your Honour, we’ve taken your Honour’s advice; Jim’s given me a damn good hiding, and I’ve given him back his donkey.’”

The scream of laughter in court may well be imagined. I have not space to give the story of Wharton’s electioneering tactics at Bridport; but they were funny. He harassed the Government of the day so much by his blocking that they disposed of him by a colonial appointment.

BARON CLEASBY [1868–1879].—I had a few cases before this estimable judge. His appointment was purely a political one, but I guard myself from the inference that such appointments are political jobs. There are many instances on the present Bench where such advancements have been fully justified. I have no doubt his promotion was well deserved. He was a man of fine presence, and on the Bench a most dignified figure. He had two peculiarities—one his abstention from speaking on argument unless of absolute necessity, the other a curious trick of automatically moving his head, as if in dissent. Once, arguing before him a very simple point of law, and unaware of this habit, I was surprised to find, by the motion of his lordship’s head, that he seemed to differ from me. At last I ventured to say, “But, my lord, this is elementary!” Still the same movement; so I sat down, and my wonder was increased when the judge decided in my favour.

This trick of habit gave rise to a good story, which I have never seen in print—maybe the offspring of some facetious young counsel.

The opening of the courts in the Assize town is always a great day with the provincials. The procession to the church, where the judge says his prayers and listens to a homily—the march to the court, with the attendant javelin men and the braying of trumpets—the men in wigs and gowns, fill the rustic mind with the sense of awe and the Majesty of Justice. It is related that a farmer took his son into the Crown Court; on the Bench was Baron Cleasby, gorgeous in scarlet and ermine, statuesque and motionless. The yokel gaped with open mouth, as he gazed at the

resplendent figure on the raised dais. Suddenly the Baron moved his head, from right to left and left to right. "Whoy, feyther," said the boy, "it's aloive!" He thought it was a waxwork.

But badinage apart, Baron Cleasby was an excellent and reliable judge.

Mr. JUSTICE LUSH [1865-1881], another Home Circuit man, I remember as leader of his circuit, a decade before I was called. Originally articled clerk in a solicitor's office, he made his way, by push and merit, to the Appellate Court. As counsel, he was considered one of the shrewdest men of his days. He was a very religious man, and, being a Dissenter, occasionally preached.

If *A Generation of Judges*, by their reporter, was the work of Finlason—which, from its slipshod style, I can scarcely credit—dear old Fin states that "Lush was known to the world as one of the three judges who took part in the Tichborne trial, and as a judge guilty of the eccentricity of preaching on Sundays"—a wonderful reputation; but as the same writer states that until he was made a judge Lush had never seen the inside of a Criminal Court—a manifest absurdity, as in every Assize Court there is a Crown side—the author must be taken *cum grano*. Certainly this memoir of distinguished judges, if by him, failed to do him or them justice. Finlason at the Bar was one of the finest *raconteurs* of past judges I ever heard, simulating their voices, imitating their gestures, and convulsing his hearers with laughter, by the good stories he told of them. He was a delightful Irishman, with a slight brogue, full of fun and waggery. We always looked to him for a book of "Wit and Humour," and if the anonymous publication was his it was a disappointment, and he was clearly out of his element as a biographer.

The work of a legal reporter, besides being arduous, seldom leads to any preferment, the only notable instances to the contrary being Lord Blackburn and Mr. Plowden. All poor Finlason got—and it cheered him in his old age—was that he was raised to the Bench—of the Middle Temple.

My own recollection of Mr. Justice Lush is, that he was a

most astute and painstaking judge, a good man and an excellent companion. He lived to see one of his sons-in-law, poor Watkin Williams, a puisne judge ; another is English Harrison, K.C., of whom, still being in the flesh, I must say nothing ; one of his sons, Lush-Wilson, is a County Court judge ; another Mr. Lush, K.C., preparing for the inevitable.

Mr. JUSTICE WATKIN WILLIAMS [1880-1884]. Just a few lines as to my lamented friend at the Bar. Like so many other judges and barristers, the Bar was not his first profession ; the man who subsequently learned how to dissect a case first learned how to dissect a body—he was house-surgeon at the University College Hospital. As a leader I found him always genial and kind, and I recollect the pains he took to make me understand an important fore-shore case we had together at Ipswich. He owed his preferment, to some extent, to politics, having entered the House early in life.

His career on the Bench was very short—barely four years—and terminated somewhat tragically from sudden death through heart failure. When he became a judge he was always the same to his old friends ; he put on no side—he was always “Watkin” to them. One of them addressing him after his preferment as “My Lord,” was welcomed by an *expletive* warning to call him Watkin.

In the course of these pages I refer—omitting several—to men who have changed their first calling, many of whom obtained judicial honour. One of the oddest instances was afforded by the late Mr. Macdona, a most delightful man. He was of a clerical family, and some of his brothers and himself had livings. He expected that his eldest son should be one of the cloth. His son dissented, and expressed his intention of going to the Bar. Macdona, finding he could not dissuade him, said, “If you become a barrister I will disgown myself and be your companion at the Bar,” and he was called to the Bar of the Middle Temple.

CHAPTER IX

VICTORIAN JUDGES (*continued*)

SIR GEORGE JESSEL [1873-1883], Master of the Rolls, was one of the greatest judges of the Victorian period on the Equity side. Being a Common Law man I was seldom before him—occasionally on some application in the Court of Appeal—but I was always a good listener. He was a complete lawyer, and as a judge most genial. His style was unpolished, and although of good education, his alphabet lacked one letter. This had some odd results. On one occasion, when examining a French witness, in a patent case as to steam boilers, he had to interrogate through an interpreter, whom he thought did not convey his meaning to the witness.

“No! no!” said Jessel, with some impatience. “Do tell the man, he don’t grasp my meaning. My question ’ad nothing to do with ’eating the pipes.” This the interpreter translated, “Monsieur l’Avocat vous prie de croire, qu’il ne s’agit nullement, dans son interrogatoire, de ‘*manger les tuyaux*.’”

From a lecture given by my old friend, Judge Willis, on Sir George Jessel, I venture, as a snapper-up of unconsidered trifles, to annex an original anecdote in further point. I use the words as Willis gave them:—

“Of Jessel, when Solicitor-General, having had a brilliant passage of arms with Lord Chief Justice Cockburn, a little creature at the Bar said to Serjeant Parry, ‘Why, Parry, he drops his aitches!’—I shall never forget the manner in which

the Serjeant—his forehead moving backwards and forwards, as was usual when he was excited—turned round, glaring at him, and said, “Sir! I would rather drop my *h*’s with Jessel in hell, than aspire with you in heaven.”

A wag of our day, poor Oswald—who, after years of impudence to the tribunals he addressed, wrote, appositely, a book on *Contempt of Court*—one day was pressing a point before Jessel, and cited words in support from a reported judgment of the Master of the Rolls.

“Mr. Oswald,” interposed Jessel, “I could not have been such a fool as to have said that!” “Oh yes, my Lord,” retorted Oswald, in his funny way; “you were, my Lord, you were.”¹

He was the counsel who bought of a learned judge a smart sally. In a claim for the detention of goods, Oswald had occupied the Court for the whole morning in propounding the law as to trover and detinue, and having at last exhausted his fund of argument, said,

“And now, my Lord, I will address myself to the furniture.” “You have been doing that for a very long time, Mr. Oswald,” said the judge, with a quizzical smile.

A bright repartee is attributed to this humorous counsel. A judge who was himself not over-refined, said to him one day, “I may teach you law, Mr. Oswald, but I cannot teach you manners.” “No, my Lord,” was the quick rejoinder; “I know you can’t.”

After all, I think Oswald, who was a personal friend of mine, wore the “motley” more from fun than any desire to offend—in any case he was a good fellow and much regretted.

LORD WESTBURY [Richard Bethell].—For the sake of anecdote I admit this learned Chancellor into my list of judges—although an Equity man. He was very witty, and in a sort of musical drawl of the voice could give some sharp stings. He met Merryweather, a well-known counsel, one day and said, “Why, Merryweather, you are getting as fat as a

¹ A portrait bust of the great Master of the Rolls is placed in one of the corridors of the Supreme Court.

porpoise." "Yes, my Lord," said the other, eyeing the Chancellor from head to foot, "or a *Great Seal!*"¹

When at the Bar, Bethell was much admired by Vice-Chancellor Shadwell, which gave rise to a riddle. "Why is Shadwell like King Jeroboam?" *Answer*: "Because he has set up an idol in Bethell!"

A relative of his supplied me with a vouched story, illustrating his soft, affected speech. The Chancellor was very fond of broiled bones hot and highly peppered. One night supping at home, the dish was not to his taste, and the poor cook was sent for to be reprimanded. In his most dulcet tones, he admonished her—

"Woo-man, you have no ideeah of a dev-ille."

LORD ESHER (Richard Baliol Brett), [1868–1897], with his handsome presence, great knowledge, especially in mercantile and shipping matters, and his indomitable good temper, was a fitting successor to Jessel as Master of the Rolls. At Nisi Prius the day always began with him in sunshine; his face as he took his seat on the Bench beamed with smiles, as he nodded familiarly to the men whom he knew. As counsel, before my time, he was very popular with the Bar. On the Bench he was dignified and courteous to every one. Before I was called I heard him try the case of Valentine Baker, defended by Mr. Hawkins, who, in my imperfect lay opinion, handled a no doubt difficult case very badly. As an instance of the tenderness of Brett, he allowed one of Baker's fellow-officers to stand by him at the side of the dock. Credit to the judge who permitted it—credit to the comrade-in-arms who stood there!

Before he became Master of the Rolls I had the pleasure of meeting his Lordship on Vacation rambles, and was much struck by his bright, cheerful mind and intellectual conversation. He was witty and full of playful humour. He

¹ Of Merryweather a good story is told. When the banking house of the defaulting Sir John Dean Paul closed its doors, Merryweather, who banked there, slipped down the steps into a friend's arms. "Why, what's the matter, Merryweather?" said he. "Oh!" returned the wit, "I've only lost my balance!"

was satirical, but the wound inflicted was always on the surface. He was the beau ideal of an English judge.

LORD CHIEF JUSTICE COLERIDGE (1880-1894).—I now pass on to a rapid sketch of one of the great luminaries who have shed radiance on the Bench. By some members of the Bar he was not liked, probably by those who had suffered from a *suaviter in modo*, under which there was frequently a satirical stab. His corrections were always given courteously—sometimes with exaggerated politeness. He could wound. He affected a humility which some said he did not possess. I can only speak of him from my own experience.

It was his fashion to deprecate his own views, and to defer apparently to the opinion of others, but in a way of implied contempt for those other opinions. Personally, I entertained for him great respect and affection—an affection and respect which was felt by the majority of the Bar. As to his accomplishments, legal attainments, powerful oratory and wit, there could be no question; his bearing that of a high-bred gentleman; he was polished—he was a Coleridge. As counsel, for readiness no one excelled him. As an instance: when quite a youngster, while addressing a Devon jury in a murder case, in which the hearing had been prolonged until nightfall, he was interrupted by the light going out—it was quickly restored.

"Gentlemen," he said, resuming his speech, "you have seen how suddenly the light went out—how quickly it has been restored. It is in your power to extinguish the prisoner's life—but remember, if you do so it cannot under any circumstance be replaced."

He was always influenced by a strong religious feeling, although he never paraded it. Lord Russell of Killowen, as Charles Russell, was his junior in the Saurin case. Some religious enthusiasts had founded a pseudo-nunnery, to which Miss Saurin—and her money—had been admitted. Miss Saurin had been expelled for some trivialities—an anecdote of which, as illustrating Coleridge's banter, I give in Chapter XXIX. Russell recounts what he describes as "one flash" from Sir John's reply.

"Gentlemen," said the counsel, "I cannot help thinking that people who devote themselves to this life imitate too exclusively one part of the life of our Divine Lord, and forget the other. They remember the forty days in the Wilderness, and the hours in the Garden and on the Mountain, but they fail to bear in mind the 'Marriage of Cana' and the 'Feast of Bethany.'"

Coleridge was a great conversationalist. He had a fine memory, and brought out of his storehouse many brilliant things. I dined once with him at the hospitable table of Sir Thomas Chambers (Tommy the Recorder), and was divided from him only by the Ordinary of Newgate. I had an intellectual treat, as the judge bubbled over with wit and anecdote. On another occasion when our King—then Prince of Wales—(who is a Barrister without practice save for the Brief he holds for the Nation) dined with us in the Middle Temple Hall. The Chief was Treasurer. Except the usual royal toasts none other are allowed. Coleridge, who was sitting next to the Prince, had reminded his Highness of the rigid rule, to the observance of which he promised compliance; but, notwithstanding, he proposed the health of the "Lord Chief Justice." The Chief was equal to the occasion, and in the course of a humorous reply to the toast said,

"'Put not your trust in princes' was a lesson that all had learned from the Psalmist, and the truth of it had been verified that evening."

He also, in the course of his admirable speech, silyly gave an extract from Pope on a quondam Prince of Wales, who said, "Mr. Pope, you do not like kings!" "Sir," answered the poet, "I prefer the lion before the claws are grown."

Our beloved Monarch has always worn the silk glove, but the claws will be ready if required.

In *Scintillæ Juris*, one of the witty emanations of Mr. Justice Darling, is a judgment of Lord Coleridge, in the case of *Thimbliger v. Hookey*, vouched by the author, which illustrates the Chief's power of humour and satire, as also of that affectation of modesty in which he indulged.

By his Lordship's kind permission, and with the consent

of the eminent publishers of *Scintillæ Juris*, Messrs. Stevens and Haynes, I am enabled to present the judgment of the Lord Chief Justice, apparently slightly travestied.

"THIMBLERIG *v.* HOOKEY.

"Judgment of Lord Chief Justice Coleridge in Divisional Court.

"This action was brought to recover damages for having been called a 'villain,' and the plaintiff alleged, somewhat boldly, as I think, that on that account his friends have deserted him. But I hope I may be allowed to say that, in my humble opinion, such of his acquaintances as I had the pleasure of seeing, when they came as witnesses at the trial, would rather cease to associate with the plaintiff if they thought he did not deserve the title the defendant had bestowed upon him; besides, I think—I speak for myself—I think it can be no loss to any man, but rather a gain, to be deprived of the consort of such friends as the plaintiff appears to have been—ahem!—blessed with.

"As to the term 'villain' or 'villein'—for it is nowhere shown which spelling the defendant intended—let us consider whether it is a defamatory word or not. A villein, if I have not forgotten my Oxford training, was one who did odd jobs; and so does the plaintiff—very. A villein carries food for the pigs; but the plaintiff is a tout, and supplies sporting intelligence. The villein was dependent on a lord, and was his 'man.' The plaintiff hangs on to several noble peers, but I hardly call him a man. 'Homo sum, et humani a me nil alienum puto'—but as to what *I* think of the plaintiff, I say nothing.

"Now to put, perhaps, a somewhat extravagant hypothesis, even if the plaintiff is not a villain, I cannot see evidence that the defendant called him so of malice, for may he not have been well deceived by the plaintiff's appearance? His conduct was very probably the result of sincere belief, and, if I may venture to use the words of a poet—

"'And gentle wishes, long subdued,
Subdued and cherished long.'

“I shall assuredly not disturb the verdict of the jury. It has been said at the Bar that by this decision the plaintiff will lose his character. Well, then, be it so. I can only say, in his own interest, that I sincerely hope he may. It has also been pathetically observed that he will be made a beggar; but when that time has arrived no one will any longer have a right to say—nor do I say so now—that his property consists of money which he has dishonestly come by. The defendant must have judgment with costs—*if he can get them!*”

The anonymous writer of “Collections and Recollections” thought that Lord Coleridge’s gibes were a little out of place on “*The Royal Bench of British Themis*.”

Coleridge was a remarkable elocutionist, so perfect that one of his friends said, “I should enjoy listening to Coleridge even if he only read out a page of Bradshaw.”

He was essentially a wit, and I conclude this brief sketch by a happy instance attributed to him.

The Chief was one day out shooting with another judge who, not much of a sportsman, continually missed his bird and at last appealed to his colleague for a reason.

“My *dear* fellow,” said Coleridge in his suave way, “I *fear* you give them *too much* law.”

CHAPTER X

VICTORIAN JUDGES (*continued*)

BARON HUDDLESTON (1880-1890) as Mr. Huddleston was a most successful advocate, well educated, and a perfect linguist. He commenced his career as a tutor, but ambition led him to abandon the ferule and devote his energies to the "unwhipped of Justice." He therefore first tried his hand at the Old Bailey, and the man who subsequently became the companion of princes and dukes and other people of quality, might possibly have been seen with a brief from the dock defending some petty pilferer. One day a case was being tried when an Italian was tendered as a witness. As he did not speak English an interpreter was necessary, but the Court official was absent. A young counsel got up in his place and tendered his services, which the judge accepted. He was sworn, and did his work in masterly fashion. The counsel was Huddleston, and his success was assured from that moment.

He was a leading Q.C. when I first knew him, loaded with briefs, and certainly in more cases than he possibly could attend to. *Apropos* of this, I may interpose a story of Huddleston and Kelly. I was one morning in the robing-room at the Guildhall during the London sittings—where at that happy time there was the cream of business—when Huddleston came in in high good-humour, and told us how he had just turned the tables on the Lord Chief Baron, who, as Sir Fitzroy, had monopolised even the crumbs which fell from the attorney's tables.

"I've just left the Baron," said Huddleston while his clerk

was robing him. "How he's fading! He said to me in a quavering voice, 'My dear Huddleston, you are not doing your clients justice. When a case is called on before me I hear that Mr. Huddleston is in it, but I do not see Mr. Huddleston. Now that is not fair. You have too much business, my dear friend; you should return the briefs you cannot attend to.' So I told him a story of Sir Frederick Thesiger, who had one day a brief delivered with a cheque for 100 guineas pinned to it. But Sir Frederick was busy, and returned the cheque and brief. The same brief with a new back sheet and a fresh cheque was sent to Sir Fitzroy Kelly, who was also in difficulty, so he sent the brief round to his friend Sir Frederick with his compliments, and asked him to be kind enough to hold it for him—but he kept the fee."

Huddleston told the story wonderfully well, mimicking the Baron's soft, feeble voice, and we laughed heartily.

"But, tell me, Huddleston," said a young counsel, "what did the Baron say?" "Oh," returned Huddleston, "he held up his taper fingers deprecatingly, and said, '*Well! well!*'"

Huddleston's foible was his love of high Society, which he courted, and which laid him open to many ill-natured remarks. In Vacation I saw him once at the Kursaal, Ostend, playing whist with King Leopold, a Russian Grand Duke, and the Lord Mayor of London. He looked gratified as I passed him. He loved lords, and in the end married into a ducal house. Mr. Plowden in his book refers to the delight Huddleston had in "titled friends," and gives an anecdote in point, for which I refer my readers to *Grain or Chaff*; but I give another, to whet their appetite.

At some hotel on the Riviera Huddleston had written down in the hotel book his name, "J. W. Huddleston, Esquire, K.C., M.P.," to which some ill-natured friend added, "Tuft Hunter and Toady." In the local paper next day, among the fashionable arrivals was announced that of "J. W. Huddleston, Esquire, K.C., M.P., Tuft Hunter and Toady," the scribe having taken those words as titles of distinction.

I was shown a print of the paper one night at mess at the Middle Temple.

I am afraid that on one occasion I unwarrantably offended the Baron's pride and dignity, and when I look back I cannot imagine I could have been guilty of, to use pure Saxon, such cheek.

In the days of my prosperity I occasionally had those clashes of cases which so perplex counsel. A man is busy and refuses a brief, which he subsequently finds he could have held. He has lost a fee, and perhaps a client. The temptation is therefore great to accept everything that is offered. Of course no man of principle would accept a brief which he positively knew he could not attend to. But to resume. One day I had a surfeit—five cases in different courts. In such instances the only thing to be done is to become a mere machine in the hands of your clerk. Mine used to say, "Don't worry, sir, cases sort themselves." Sometimes they did, sometimes they did not.

On the day in question my clerk had placed me in one court and provided me with a couple of devils; he watched another court, but he left Baron Huddleston's unprotected. That seemed safe; mine was the last case, a part heard, seemed likely to last for days, and there were intervening cases. I sat in the court where I had been placed, and was watching how other men did their work, when some clerk came up to me hastily, "Mr. Crispe, you are on in court, and the Baron has waited ten minutes and won't wait any longer." I was off like a rocket, and raced the corridor to the court to find—an empty Bench!

Mr. Arthur Cohen, K.C., was my opponent; he was tying up his papers. He told me the part heard had broken down, the intervening cases had been settled, and our case called on; that he had informed the judge I was in it, and that I had been given ten minutes' grace. My clients were not in court, my clerk could not be found. "So," said Cohen, "Huddleston put me on my election, either that the case should be struck out or that I should ask for judgment for the defendants, so I was obliged to ask. I did all I could for you!"

"I am sure you did," said I. "Will you do a little more—forego your judgment—if I can get the judge back?" He acquiesced readily. I addressed the jury, who were putting on their hats and coats. I appealed to them to stay, and they good-naturedly consented. Then another scamper. I crossed the solicitor's well as a short cut, invaded the sanctity of the Bench, and in a minute was in the Judges' Room—Tableau! The Baron was in his shirt-sleeves. Breathless, for a moment I gazed at the picture.

"What do you want here?" he snarled, with an ominous glitter in his eyes. "I want you to come back to the court, my Lord." "Wha-at?" he returned in amazement. "Yes, my Lord, I beg you most respectfully to re-try the case." "Fiddlesticks! Mr. Cohen's got his judgment." "Mr. Cohen, my Lord, has consented to waive it." "Rubbish! The jury are gone, and I won't try without a jury." "The jury, my Lord, have consented to remain." "Humph!" grunted the besieged Baron. "And you really have the impudence to ask *me* to put on my robes again." "Yes, my Lord, if your Lordship pleases." "It does not please me—but I'll do it." And he annihilated me with a look. "Thank you, my Lord."

And he came back, but I did not get much by my motion—he non-suited me before one o'clock.

Baron Huddleston knew how to manage a jury better than any judge I knew. He would leave his seat, and approaching the jury-box, point out most affably perhaps some difficulties in a plan or a document, he would flatter, coax, and wheedle them; he became, in fact, a thirteenth jurymen; and it was almost impossible to get a verdict when his views were the other way.

To the Bar, however, in his late years especially, he was not so agreeable; he could be pettish and uncivil. Few, however, knew the physical agony, arising from a painful malady, which he suffered on the Bench, and to this cause the irritability of one of the kindest and best-hearted of men may have been attributable.

After my escapade I fancied in cases I had before him that he treated me somewhat slightly; and more than

once almost provoked, what is so much to be deprecated, an unseemly conflict between Bench and Bar. Happily I possess an equable temper, but I am very sensitive, and if I had a grievance against a judge I always wrote to him, instead of creating an uproar in court, for "copy" in the morning papers; so I wrote to the Baron to ask him what he meant. His answer was in a letter more than kind, in which he disclaimed any intention of annoying me, and very gracefully expressed his satisfaction with the way I had always conducted my cases before him. It was most charmingly worded. As to scenes in court, I deal with Bench and Bar collisions in another chapter.

BARON BRAMWELL (1856-1881) was the first judge whose hand I had the honour of shaking. The "bold Baron B." was a man full of courage, genius, and mirth, he teemed with wit, but the brochure *Bramwelliana* lacks most of the good things he said. They are lost, unless they exist in the minds of the men of his circuit who have survived him. Our first meeting was at Maidstone in 1874, just after my election as a member of the Home Circuit—the occasion the judge's dinner.

The judges invite the Bar to dine with them at their lodgings, which affords the opportunity of presenting the new members of the circuit—a legal levee.

I was presented to the Baron, who shook my hand warmly, and in his unctuous way said, "Well, sir, I hope to have the opportunity of non-suiting you very often." Henry Fielding Dickens (Mr. Dickens, K.C.) was junior of the circuit, and was introduced by Harrison, a very able lawyer, whose pupil Dickens had been. Harrison was familiarly known as the "Devil," from his appearance, which was somewhat Mephistophelean; he had another sobriquet which old members of the "Home" may recollect, but one is enough. As we had two Harrisons on circuit, we had to dub the other "Angel" (Mr. English Harrison, K.C.). I am glad to say the Angel is still flying.

It was Harrison's duty to present "Harry," which he did in this form :—

"My Lud, allow me to introduce to your Ludship a son of the well-known Charles Dickens."

"‘Well-known Charles Dickens,’ said the judge, swelling every one of his words. “‘Well-known Charles Dickens!’ Might as well say, ‘Well-known Julius Cæsar.’” Then, turning to the junior and grasping his hand cordially, “I hope, sir, you will become a credit to your father.”

"And, my Lud," said Harrison slily, "*to his father-in-law.*"

I cannot remember trying a case before him, but in my waiting-time I had the opportunity of hearing some of the good things which fell from his lips. Bramwell was very quizzical, and a bit rough on his brother judges. When he first sat as Lord Justice, on the Chancery side of the Appellate Court, to learn a lesson in Equity, he was compared to a wild elephant between two tame ones. The case was long, and Bramwell was amazed and bewildered at the intricate points which gave his brethren no uneasiness. At last, when the Chancery judges gave their judgment, Bramwell had to give his, which he did in the following terms :

"Having listened all day to things which I do not think I ever heard before, I can safely say I am of the same opinion, and for the same reasons."

A more extended instance of his poking fun at other judges appears in Mr. Justice Darling's brochure, *Scintillæ Juris*, in which a vouched judgment of the Baron's is given in a case there entitled "*Graviped v. Curricie*," under which title I have been unable to find it in the Law Reports. I venture to steal a few passages. A man had been run over and injured. He brought an action and recovered damages. On an appeal, two judges held he was entitled to hold them. Bramwell differed; he considered there was no negligence on the part of the driver, as his horse had run away and the driver could not control it. That was his view, and, differing, he had to give his judgment first.

"Is it to be said that the defendant is bound to hire a driver able to hold his horse when it is frightened and runs away? Is a mariner negligent who fails to propel

his vessel against the wind? If so, a defendant would lose his action, though he had employed a Nelson to sail her. I think, then, that in this action the plaintiff cannot recover—though in the hospital he has done so—which is another reason against him; for surely *nemo bis vexari pro eadem causâ*. So no one should recover twice for the same injury." Then after a pause: "Oh yes! I wish to add that neither of my brethren agrees with this judgment."

Baron Bramwell was very popular, and always kind to young beginners—very just, very merciful, a fine specimen of a manly English judge.

BARON POLLOCK, the last of the Barons. It has been said that law in the blood of the Pollocks was like literature in that of the Coleridges and music in the Mendelssohns; but it was not in law only they were distinguished: in letters, in the Army, in medicine they made their mark. Lord Chief Baron Pollock, son of an opulent London saddler, had for brothers a Lord Chief Justice and a Field Marshal. They owed, no doubt, much to their father, but more to their mother. Mrs. Pollock must have been a remarkable woman, such as George Eliot depicted:

"Genius comes often from the mother; it runs underground like the rivers in Greece."

Of Mrs. Pollock it is related that when young Pollock (afterwards Lord Chief) was sent to school at St. Paul's, he was a bit of a scapegrace. Dr. Roberts said to his father, "Sir, you will live to see that boy hanged." But when he came out Senior Wrangler at Cambridge, Roberts said to his mother, "Ah, Madam! I always said he would fill an elevated situation."

Of the Baron I have to deal with I have but little to say, save that he was always most kind to me. On the Bench his appearance was austere—a tall, ascetic-looking man, with no shade of colour in his thin, parchment-like cheeks, with a grave face and demeanour, he looked as if he had been fed, if not nourished, on law and precedents. He was a

most satisfactory judge, and a very amiable man. I speak further of him in Chapter XIV.

Mr. JUSTICE FIELD (Lord Field), [1875-1890] I place first, as one of the most learned. He had been through the curriculum of the lower branch of the profession, and had, like Lord Russell of Killowen and other judges, first practised as an attorney. As one of the most active of the men concerned in the great practice reform of 1873, he did away with the title of attorney, which had become one of opprobrium. I have often thought that if the student, who aspired to the Bar, were to pass a year in the office of a solicitor it would be of great advantage to him. Some barristers have been articled, admitted, and by their own desire struck off the Rolls without practising, and have commenced afresh as Bar students. My friend, Mr. Herbert Reed, K.C., a very complete lawyer, is an instance. Mr. Rawlinson, K.C., I think, spent a year with Messrs. Baxter. When, by the reform I have referred to, the days of rejoinder, sur-rejoinder, rebutter and sur-rebutter were at an end, Justice Field was deputed as a Judge at Chambers, to settle the new procedure. His work was arduous, but despatched with great promptness. He did not allow counsel to waste a moment of his time, and if that were attempted, woe be it for the counsel. He was irritable, and could be, sometimes without cause, angry. Except for a few conflicts, I always got on well with him.

"Study your judge," was always my maxim; humour his weaknesses—judges have some—and never skate up to dangerous water. In such way, you may manage the judge whom other counsel have found unmanageable. Whenever you find your judge will do your work for you, let him do it; he will do it much better than you can. But certainly Mr. Justice Field had a very lively temper, and there were more conflicts between him and the Bar than with all the other judges put together. Mr. Alfred Cock, an intelligent Nisi Prius counsel of his day, roused him to ire more than once. He used to stand up to his judge somewhat defiantly.

I recollect when Justice Field was settling the procedure, I was before him. My client, Dr. Septimus Gibbon, a well-known West End physician, had lost a case in the Mayor's Court through an accident of non-appearance, with damages against him. As no execution could issue outside the City, the usual steps were taken, so that the sheriff should be able to levy, which he did, and the doctor found himself entertaining an unwelcome guest. Meanwhile, the judgment had been set aside. A summons was taken out, calling upon the sheriff to show cause why he should not vacate the premises. It came on, on a Saturday. My client, who was a personal friend, called at my chambers and begged me to place fully before the judge the scandalous way in which the judgment had been obtained, and to use my best energies. I told him it was not my intention to say a word. The poor doctor looked blank and angrily remarked, "Surely you are not serious! What are you briefed for?" "To hold my tongue, my dear Doctor," said I. "You'll see." I knew the judge would do my work for me. I found myself opposed to Mr. Macrae Moir, a shrewd Scotchman, who used to colour his cases a bit, and when he began to romance I broke my pledge and said, "Oh! Mr. Macrae Moir!" "Will you be silent, Mr. Crispe!" said the judge, feigning anger. "I desire you to go to the other end of the room, and remain there until I call for you." I merely shook my pince-nez at him. In a few minutes he decided in my favour, and the doctor enjoyed his Sunday dinner in peace. I certainly never said less in any proceeding.

For the plaintiff, I was in a slander case at the Guildhall, an odd one of defamation, in a conversation which took place between two gentlemen in a Turkish bath. There was a good deal of scandal about a charming Society lady, whose fair fame was impeached. I arranged with my opponent—my client handsomely consenting—that no reference should be made to this lady; on other points we fought vigorously. Justice Field saw what we were at, and accused us both, very angrily, of trying to defeat the ends of justice by keeping back evidence from the jury

and himself. He pressed us so hard that at last we put our heads together and came to a compromise. I thereupon informed the judge that a settlement had been arrived at, on terms which would be endorsed on counsel's brief. We thus avoided publicity.

The judge was furious. "Gentlemen," he said to the jury, "the whole morning has been wasted in playing a farce, the *dénouement* of which neither counsel dares venture to face;" and with an angry sweep of his hand he upset the whole of his papers on the head of the unfortunate Associate who sat below him.

A few days afterwards I met him in Fleet Street; he shook his fist at me, but his face beamed, so I knew all was right. In a much more important matter, I had a strong taste of the judge's quality.

Two actions had been brought against the London and Tilbury Railway Company, I think it was—arising out of an accident on the line. They were also tried at the Guildhall. Mr. Waddy, Q.C., was for the plaintiffs—father and son—my old friend, T. R. Kemp, his junior. At that time I was devilling for Kemp and held his briefs in these cases. I felt quite safe with my learned leader, and he adopted me as his legitimate junior. To be before Mr. Justice Field in a claim for damages against a railway company was not to have the most favourable tribunal. At the Bar he had been a railway counsel. I do not mean to impeach his fairness, but I am sure it prejudiced him against such claims. The father's case was taken first, and Waddy handled it admirably. I did my best to help him. The judge, who I fancy did not like Waddy, was at him throughout, and by interruption, and interference, soon showed the summing up we should have—and we got it. In the result, nevertheless, the jury found for the plaintiff with substantial damages. Mr. Justice Field, who was fond of walking about on the Bench, literally stamped with rage, and in an angry voice said, "Gentlemen, I will dispense with your further services." The foreman answered, "My Lord, I understand the next case is precisely similar, had we not better try it?" The

judge, without condescending to answer, said, "I desire you to leave the box, and *at once*." This helped us. The jury was a special jury of intelligent City men, and they were held up as unfit to remain in the witness-box. A fresh jury was impanelled, who had heard the slight put upon their body, and we had no difficulty in getting a verdict in the second case.

Our triumph was short-lived. The Company applied to the Divisional Court for new trials, which were granted, and by a curious coincidence, when the cases came on for re-trial, they were in Mr. Justice Field's list for the day. Parenthetically, I may again urge the advantage of devil-ing. I have referred to it elsewhere. Devil as much as you can, say I, to the young counsel. I support my view by the present instance. Before the re-trials came on, Kemp had got his rank as Q.C., and I was briefed in both cases with handsome fees. For thirty years I enjoyed the patronage of the firm who instructed me. I entered Mr. Justice Field's court with my treasured briefs and took my place. Immediately the judge saw me he smiled and said, "Mr. Crispe, are you in the railway cases?" "Yes, my Lord," I answered. "Would you like me to try them?" I boldly answered that I would rather not. He then said, "Well, I do not think I ought to," and he transferred them to Baron Cleasby's court. I left him gratefully.

The new judge was in our favour from start to finish, and in each case we got increased damages.

I was present at the function held on Mr. Justice Field's retirement, necessary from almost total deafness. His address was so pathetic when he bade farewell to the Bar, that many eyes were "dim with childish tears." He had well earned his rank of Law Lord, and took with him the affection and respect of all who knew him well.

Mr. JUSTICE GAINSFORD BRUCE [1892-1904] was a very able judge, and I saw him frequently at my club. He had the gravest face I ever saw. There was only one judge who facially approached him, and that was Mr. Justice Day. He, like Mr. Justice Manisty, was appointed when

well advanced in years, but yet had time to distinguish himself on the Bench. He was always painstaking and very sound. He avoided a public function, and desired to say goodbye to us in the Middle Temple Hall. We, in Indian file, passed before him, and with a shake of his hand bade him Godspeed. His retirement seems to have restored the health which hard work had impaired, and I hear he was recently at the Middle Temple Library, again dipping into the law books he loved so well.

CHAPTER XI

VICTORIAN JUDGES (*continued*)

LORD RUSSELL OF KILLOWEN [1892-1900].—
A figure which stood out pre-eminent among the legal men of the Victorian period, whether as Lord Chief Justice or Sir Charles Russell, whether as advocate, orator, or judge. As advocate intrepid, brilliant, "he could electrify the jury by the magic of his voice." A perfect elocutionist—inflection, emphasis, accent, pause, harmony, all taking fitting place. His action grand, or graceful, as occasion required. His eloquence impassioned, he could move the multitude. In the great Parnell case, when he said, "I have spoken not merely as an advocate, I have spoken for the land of my birth," his speech was one of intense patriotism. I had the advantage of hearing it.

On the Special Commission of 1888, Sir James Hannen and Justices Day and A. L. Smith (dear A. L.!) were Commissioners. The inquiry was as to the allegation made against certain Members of Parliament and other persons, in the course of the action "*O'Donnell v. Walter and others.*" Sir Charles Russell and Mr. Asquith appeared for members of the Irish Party—Parnell, Patrick Egan, and John Dillon; Sir Richard Webster (Attorney-General), Sir Henry James, and Graham (dubbed "*fieri facias*" from his rubicund tint) for the *Times*—R. T. Reid and Lockwood for other members. What a Bar! One now a Lord Chancellor, another Lord Chief Justice, another Prime Minister. Mr. Justice Day was on the Commission *contre-cœur*, and during the whole pro-

ceedings never uttered a word ; he had no sympathy with Parnell and the Irish leaders, but he joined in their acquittal of the gross accusations preferred against them.

I cannot refrain from giving the peroration to Russell's speech.

"In opening the case I said that we represented the accused. My Lords, I claim leave to say that to-day the positions are reversed. We are the accusers—*the accused stand there*. I believe that this inquiry in its present stage has served, and in its further developments will serve, more purposes even than the vindication of individuals. It will remove baneful misconceptions as to the character, the actions, the motives, the aims of the Irish people, and of the leaders of the Irish people. It will set earnest minds—thank God there are many honest and earnest minds in this land—thinking for themselves upon this question. It will soften ancient prejudices, it will hasten the day of true union and of reconciliation between the people of Ireland and the people of Great Britain ; and with the advent of that union and reconciliation will be dispelled, and dispelled for ever, the cloud—the weighty cloud—that has rested on the history of a noble race, and dimmed the glory of a mighty Empire."

Russell was a true patriot, faithful to the country of his adoption. Originally a solicitor at Belfast, he left that limited sphere for his abilities and joined the English Bar, of which he became the most distinguished member. But it was not merely as an advocate and a great judge he will be remembered—he was socially delightful, his home-life was perfect. A great card-player, and for high stakes, he would, with his friend Frank Lockwood, with equal pleasure play a game of beggar-my-neighbour with the little Russells.

He had a full appreciation of the value of effect. I have noticed in this book the desirability of rehearsal if you want to do things well and gracefully. An instance : on the eve of Russell being sworn in as Lord Chief Justice, I was about entering the court appropriated to the Chief Justice, and finding the door closed looked through the glass panels. I

saw the judge standing on the Bench, and Master Mellor, King's Remembrancer, going through the formula of next day's proceedings. It was, in fact, a dress rehearsal.

I never had the pleasure of being junior to Sir Charles, but on some occasions I appeared against him. In one case, "*Kaltenbach v. The Crédit Lyonnaise*," I was led by Sir Edward Clarke and Mr. Finlay. It was a big commercial action, in which I had a pleasant commission in Paris to examine members of the Bourse, and the *Coulisses* (outside stock-brokers). I remember that commission, from the generosity of my client, who, on my arrival at the Grand Hotel, said to me: "I propose to make this trip to Paris, Mr. Crispe, not only profitable to you, but pleasant. I suggest that we dine at the best restaurants, eat of the choicest viands, drink wines of selected vintage, and smoke cigars of the finest brands;—and, if your taste lies in that direction, I know of two pretty girls we can meet to-night at the '*Folies Bergères*.'" Nothing could have been more complete.

Russell always squared his bad cases if he could; hence he nearly always appeared to be on the winning side. Unfortunately he settled this case by a tempting offer, which was accepted. I say unfortunately, because I lost thereby the publicity of a big trial with its attendant refreshers.

Some other cases arose out of the ill-judged proceeding of the proprietors of the *Pall Mall Gazette*, who, as censors, announced with great courage their intention to devote their pages, for a period, to the exposure of a form of vice, terrible in its way—the purchase of very young girls for immoral purposes.

The *Pall Mall*, of necessity, was, during the period of publication, absent from the tables of most of its subscribers, since the details were unsavoury to a degree. The outcome of this curious venture was the scandals, in regard to Eliza Armstrong, for whom actions were brought against Mr. Stead and Mr. Bramwell Booth, and other gentlemen of the highest integrity, but with possibly exaggerated views. There could be no doubt whatever of the honesty of purpose of the repre-

sentatives of the *Pall Mall*. But they got themselves into a mess about Eliza Armstrong. In one of the cases a funny thing happened, which illustrates how necessary it is for young barristers to be cautious. A young counsel had drawn a very voluminous statement of claim, which might easily have been struck out for prolixity. He was interviewed by a pressman with the view of obtaining information. The counsel, proud of his maiden effort, lent him a print of the claim. The next day it appeared *in extenso* in an evening paper, occupying nearly a column, and with the counsel's name at the foot of it. What became of that young pleader I do not know.

Sir Charles, I fancy, appeared in all the cases and settled them—unfortunately for me, as I was briefed.

Russell was considered at the Bar as overbearing in his manner; and to his clients contemptuous, even offensive. His irritability was extreme. It was feared that on the Bench he would be autocratic, but there was not a trace of assumption of anything beyond the dignity of his office when he was in power. He had only one weakness, and that was snuff, of which he took an inordinate quantity. On his first appearance on the Bench, there was his favourite snuff-box with a relay of bandanas. He was guilty, shortly after his appointment, of a piece of refined cruelty. He had a great idea of the fitness of things, and passed an edict that the leaders of his Bar should be bare-faced. When, after this, I saw poor Witt, who wore a very big, dragoon moustache, without it, I scarcely knew him, and there were tears in his eyes. Poor Witt! he was much liked; a thorough good sportsman, and in a horse case unrivalled. Personally I think Lord Russell was right. Wig and moustache seem incongruous.

As a criminal advocate Charles Russell was not a success; the most conspicuous instance was the Maybrick case. In 1889 Mrs. Maybrick was indicted at Liverpool for the murder of her husband—convicted, and sentenced to death. Sir Charles defended, and lost a case which, in the opinion of many, ought to have been won. The result seemed to haunt him all his after-life, and to the end, the fate of the unhappy

woman occupied his thoughts, and almost up to the time of his death he attempted to obtain her release. Mrs. Maybrick was convicted of poisoning her husband by the administration of arsenic. Mr. Maybrick, it was proved to demonstration, had been for years an arsenic eater, and was constantly supplied by a local chemist with arsenical drinks. Sir Edward Clarke would have got an acquittal easily. A respite was obtained on evidence given to the Home Secretary by Professor Tidy, an eminent toxicologist, who was one of the witnesses for the defence.

Shortly after the trial I met Tidy in Paris. I knew him very well, as he had been frequently my witness in nuisance cases. We met at the same hotel, and naturally discussed the Maybrick case. He was extremely warm upon the subject, and did not hesitate, in very strong language, to express his opinion as to Russell's conduct of it. His own view was that Maybrick did not die from poisoning at all, but from natural causes. That that view had weight in obtaining the remission of the capital sentence there can be no doubt. Russell himself wrote to Sir Matthew White Ridley, in 1895—Sir Matthew being then Home Secretary—that Mr. Matthews, when Home Secretary, after hearing Dr. Stephenson and Dr. Tidy, respited the capital sentence on the express ground that there was *sufficient doubt* whether the death had been caused by arsenical poisoning to justify the respite, and that he ordered Florence Maybrick to be kept in penal servitude for life on the ground "that the evidence led to the conclusion that *the prisoner administered arsenic, and attempted to administer arsenic, to the deceased with intent to murder him.*"¹ If that doubt existed, it existed at the trial, and if the matter had been treated in the way Tidy informed me it ought to have been, the jury would have given the prisoner the benefit of the doubt, as the charge was not one of attempt.

Tidy was extremely angry with Russell. Just before the conclusion of the case, disapproving of the counsel's tactics,

¹ I quote here from Mr. Barry O'Brien's very complete biography of Lord Russell of Killowen.

he insisted on seeing him. Russell was in one of his moods, and treated the scientist's view with the utmost contempt—would scarcely listen to him; in fact, would listen to no one but Charles Russell.

The position, in regard to the remission of the death sentence, resulted in a scandalous anomaly. It amounted to this: the prisoner is charged with murder; it is doubtful whether murder had been committed at all—the death may have been from natural causes—therefore we will not hang her—*ergo* on that charge she is innocent; but inasmuch as there was evidence which led to a conclusion that she *attempted* to murder, she shall have penal servitude for life, *although that charge was not preferred against her*.

So that Mrs. Maybrick endured her punishment for a crime with which she was not charged. Against this anomaly Russell protested in vain. In 1895 he wrote: "For more than six years Florence Maybrick has been suffering imprisonment on the assumption of Mr. Matthews that she committed an offence for which she was never tried by the constitutional authority, and of which she has never been adjudged guilty."

One word more of this great judge and legislator. A career which, if it had been prolonged, might have become glorious, was almost suddenly ended by some apparently unanticipated cause. His health broke down, and there was nothing left of Lord Russell save a memory which will ever live. I attended the Requiem Mass at Westminster Cathedral on the day of his funeral, and felt very sad.

LORD JUSTICE LOPES (Lord Ludlow) [1885-1897].—Lopes (in one syllable), as he was called at the Bar, was another warmhearted man, and much liked; he possessed the most even temper. I never saw him out of humour; he was entirely without pretension. When not in harness, and on his country estate, he was more like a gentleman farmer than a judge. He was painstaking to a degree, and at Nisi Prius it was always pleasant to try before him. He detested the new procedure, and kept a copy of *Bullen and Leake* with the old precedents on his table before him. He used to refer to it as the "Lawyer's Bible."

As an instance of his unassuming manner, I well recollect a delightful holiday in Normandy, when we foregathered at the "Blanquet" at Étretat. His charming family were with him, and the party at the quaint old hostelry included my daughter, my old friend Lewis Edmunds, not then K.C., and myself. The judge had his horses with him, good country hacks, which were, however, beaten in show by those of a well-known City solicitor, addicted to side, also staying at the "Blanquet," who was good enough to put the judge quite at his ease by a quiet show of patronage, and in the opinion of "mine host of the inn" much more a "mi Lord Anglais" than the simple gentleman, so quiet and unassuming—"my Lord of Courtesy." At the Bar Lord Ludlow was, however, by no means a quiet advocate. I have seen him vigorous, and in cross-examination pitiless.

There was also at the hotel Jacques Nonnaud, known as the "Poet of Normandy," who was much delighted by my daughter's recital of one of his poems.

Mr. JUSTICE DENMAN [1872-1892] was another genially attempered judge, who well maintained the dignity of his distinguished family; he also inherited its personal graces. His fine, classically cut features were quite "Denman." He had been a Home Circuit man, and I recollect him once remarking proudly to me, that at that period the majority of judges had been members of the Circuit. I had very little personal dealing with this learned judge. I recollect him rebuking a young counsel by saying, "Remember, sir, you are not an actor." In justice to myself, I may say I was not that junior. As a fact, all clever advocates are actors.

LORD BRAMPTON [1876-1898].—Sir Henry Hawkins—giving him the name by which he was more familiarly known—must always rank as a figure among the judges of his day. My old friend Richard Harris edited his autobiography, a wonderful and entertaining book, but a little too much of the dog and his master; a mere reference might have been well allowed, but a large part of his book is devoted to "Jack," the fox terrier, who used to keep the judge company, and to nestle at his feet on the Bench. One day it is

related that Jack forgot his court manners, and barked. "*Turn that dog out!*" said the judge, glaring at the people at the back of the court.

Sir Henry was very fond of racing, a member of the Jockey Club, and seldom missed a Derby when on the Bench. He usually, in May, managed in some cause or another to reserve a point for further consideration, and oddly enough the argument was invariably in the list on the race-day.

I have given some hints as to the management of judges. I cite an instance in a cause I tried before Sir Henry—an accident case which resulted in a prolonged illness. My client was absent for many months, to his great loss. I was sure of a verdict, but the other side sought to minimise the damages by proving that a month or two after the accident the plaintiff went to the Derby; and it was strongly argued that, if he were well enough to go to a race meeting, there could not have been much the matter with him. I knew my judge's proclivities, and drew a vivid picture, with some local colouring. I am afraid I used to put the paint on somewhat thickly. I called in aid the salubrious breezes of the Downs, the tender, springy softness of the turf, the larks on the wing, the gay society, the flight of the horses, the exhilarating scene, as a combination likely to expedite, and not retard, the convalescence of my man, depressed and wearied by the tedium of a sick chamber. I *drew* the judge, who adopted my views, and added himself a graphic picture of the great event. I got all I wanted, and more than I expected.

Sir Henry Hawkins was not over-popular with the Bar; we are very affectionate, and give our judges favourite names and abbreviations—of A. L. Smith, "Dear A. L."; of Lopes, "Good old Lopes," and so on. But no one ever said "Dear old Harry"; perhaps that would have been too suggestive—for he played the very "deuce" now and then.

Part of his unpopularity arose from the way in which he suited his own convenience, and never studied the convenience of others. Frequently he would keep the court waiting by taking his seat late, making up for his want of punctuality by

rising at four to the minute. He almost invariably refused applications made for the convenience of counsel, their clients, or witnesses. Even jurymen in waiting were retained until the last moment, although their services could not be wanted. Where a case could not be reached he would not release the parties. It seemed to be a mere crass perversity—pure cussedness.

I only remember one instance of his allowing a witness to go—and then only for the sake of a joke. Counsel applied on the ground that the witness was an actor, and had to play in the provinces that night.

“Where does he want to go?” said the judge.

“To Coventry, my Lord.”

“*Let him go!*” was the laconic permission.

On circuit, however, he reversed his tactics as to short sittings, and sat long after business hours, to the annoyance of hungry counsel longing for the attractions of the mess. Once he kept me until nine o'clock, having refused my petitions for release, and when I was reached told me I might go. I lost my dinner, my temper, and some bright hours of Bohemianism, for which offence I never forgave him.

He was witty, but in a different way to his contemporary John Day, who made his jokes with a grave countenance; while Hawkins seemed to appreciate his own sallies, with an air of “Do better than that if you can.”

He had the credit of being parsimonious. Montagu Williams, I fancy, gives the well-known story of Huddleston: “What are you going to do with your money, Hawkins? You cannot take it with you, and if you could it would melt!” He made a large fortune, and, by the accident of his having been gathered into the Roman fold in his old age, his wealth went for masses and Peter’s pence.

Mr. JUSTICE DAY [1882–1901], whose loss last year [1908] we had to deplore, was a member of the Home Circuit. I can safely say that there never was a more popular man at the Bar, and few more popular men on the Bench. His features seemed specially fashioned for judicial gravity, which he did not possess. He was not an Adonis. A long, colourless face,

furrowed by lines, big round eyes, and shaggy eyebrows, small mutton-chop whiskers, a drooping mouth, and a wig a little awry, gave no idea of the power of the man and the intelligence of the owner. In a dry way he was extremely witty; he knew how, as an advocate, to laugh a case out of court, maintaining an appearance of great solemnity. To a jury he could be grave and, in his peculiar way, jocular in turns. He was always effective; every one relied on him. Whenever there was a reference, "Give it to John Day" met with immediate assent. His rise was not rapid; his fame came after he had taken silk.

Of the many instances of his humour but few remain: they seem to have fallen to the floor and have been swept away by the Court besom. I contribute one. I once had a case before him in which the plaintiff, a lady, brought an action against the secretary of a Vigilance Committee for defamation as to the house she kept. In the course of the trial the judge gave an example of his dry humour. By trade the defendant was an undertaker, and, in his evidence-in-chief, said he had left his card. In cross-examination I asked him whether it was his card as secretary or his trade card. He produced one, which was handed to me. On it he was described as an undertaker at Kensal Green, with at the corner a telegraphic address, "Thorold, London." I asked him why he gave a telegraphic address. The judge interposed. "Oh!" said he, "*I suppose it is for the convenience of people who want to be buried in a hurry.*"

As an instance of his kindness to young juniors, he sent me a most flattering letter, complimenting me on my address to the jury. I assume it is generally known that the judge on circuit has the right to choose a young counsel as travelling companion. He is called the Judge's Marshal. He becomes the judge's familiar at his lodgings; his duty is to entertain the judge, and, should the judge be active, to accompany him on his country rambles. Day was a great athlete—a very fine swimmer and an excellent walker.

Once, in Vacation, I met Justice Day at Eastbourne, and had many a ten-mile spin over the Downs with him. I can

see him now, with his coat thrown over his arm, his head well forward—he had a natural stoop—and with his long legs putting me to a five-mile speed. We would stop at a roadside inn, where he would quaff his ginger-beer—a beverage I did not emulate.

Between my wife and the judge was a community of interest. He was a collector of Dutch paintings; she fond of art, and also a collector. His mother was a Dutchwoman, her father a Dutchman. What the judge thought of me is sometimes told against me. One day he said to her, “Mrs. Crispe, I *like* your husband.” She waited in expectation of some professional compliment. “Yes,” he continued, “I like him very much; *he is a much better walker than any of my marshals!*” But he was always genial and jocular, always fond of a joke.

There is one man, still happily with us, who probably knew more of the inner side of Day’s gentle nature than any other member of the Bar. That man is William Willis, now his Honour the Judge, of whom, following the rule I have laid down as to other living judges, I say nothing except that he is “thorough.” The friendship which existed between them was of the closest character; they were frequently companions on Continental tours. One would have thought the incongruities which existed would have rendered such companionship impossible. The one was a rigid Romanist, the other a strongly pronounced Nonconformist and passive resister. In appearance they were absolutely dissimilar.

Happily for us Willis has written a small book, “*Recollections of Sir John Charles Frederick Day: for nineteen years Judge of the High Court.*” I can recommend it as well worth the reading. It must have been a wonderful magnet that drew these two men together. As Willis says: “He was a Papist and I was a Baptist; we seldom discussed, we loved.” The intimacy between them commenced at Hertford, where, after dining at the mess, they “took long excursions into the country, over hedge and ditch, through fields and lanes,” returning, says Willis, “at an early hour in the morning.”

These nightly prowls gave rise to a story, current at Chelmsford, that on a nocturnal ramble they lost their way. A bright moon had given place to a leaden sky; except for an occasional will-o'-the-wisp on the low-lying lands, there was nothing to light them. Day put on the pace, which Willis warrants at five or six miles an hour. Willis, being as short of leg as the other was long, was pumped out. They kept to the road, but a choice of many ways opened. It seemed that they must camp out, when at last, to their relief, they saw what from the roadway appeared to be a farmhouse. They made their way through the garden, dogs howling furiously; they reached the door, and knocked again and again. At last a light appeared at a window, a casement was thrown open, and a figure in night apparel presented a blunderbuss, and threatened to fire. They fled, and when daylight appeared reached the Bar Inn at cockcrow.

If this story is not in all respects true Willis has bought it. Day would have said of him, "Oh! that was only a case of *follow my leader*." Day and Willis thus became "chums," and took their wanderings together further afield. Scotland, where Willis bought a tam-o'-shanter (he would have looked well in a kilt, but what would the deacons have said?); Holland, from Rotterdam to the Zuyder Zee; Antwerp, Venice, Vienna, Verona, Strasbourg, Paris, the Alps, the Tyrol, were only part of their itinerary; and in Willis's pocket always a little copy of Milton, with which he enlivened Day. They even might have been seen at Monte Carlo, but not staking a dime. During these good times Day was made a judge.

They differed on one point, "flogging," for which the judge was a strong advocate; and in some of the mercantile towns his sentences in that respect were severe but salutary. They were both opposed to cremation. Of this Willis tells a good story. When Baron Huddleston died Day had intended to go to the funeral, but when he learned that he was to be cremated he wrote a pithy note to Willis from the Bench:—

"I had intended to go with my brother Huddleston to the grave, but since he has decided *to go off in flames* I cannot accompany him!"

It would not be fair to make further extracts from Judge Willis's book ; I can only recommend my readers to read it. It is the brief history of the inner life of a true gentleman and loving man.

As an art collector Sir John Day showed much judgment. The sale of his paintings at Christie's (1909) will always be remembered for the prices realised, (over £100,000), the profit made, and as being one of the most important dispersals of the century.

Among the judges of the Victorian period who filled the Bench with great distinction I venture to add, without following chronologically their appointments, resignations, or demise: Lord Justice Bowen, classical scholar and legist ; Lord Justice Thesiger, worthy follower of Sir Frederick ; Lord Justice Holker, so popular ; Lord Justice Henn Collins, Master of the Rolls and one of the greatest legists of his day ; Lord Justice Mathew, one of the best and most genial judges the century produced ; Justices Manisty, Grove, Stephen, Butt, Wright, Charles, and Wills.

To those who happily are still with us, some as Law Lords still in harness, I voice the hope of the Bar for their long life, health, and happiness.

CHAPTER XII

COUNTY COURT JUDGES

I PAY no idle compliment in expressing my opinion that the County Court Bench of to-day is filled by men of high capacity, some of whom, through the malignity of fortune, have not attained the higher rank for which they were fitted. Forty years ago, however, I cannot say the ability of the County Court Bench was so conspicuous. There were plenty of stories then of "Eccentrics," principally provincial.

I recollect Mr. Darling [Mr. Justice Darling], always an able *raconteur*, telling us a story in the robing-room at Westminster in his droll inimitable way. Many years afterwards, at the Lord Chancellor's breakfast, I ventured to repeat it, and the judge was amused, especially when I told him I had been trifling with his own offspring.

The County Court judge referred to always mixed his cases and muddled his facts, and before him the administration of justice was a travesty. On one occasion he was trying a simple case. An Army man had shot a tiger in the jungle, and, as a specimen of his prowess, had brought it to England to be stuffed. He took it to a taxidermist, who duly stuffed it. Failing to pay what was demanded of him, an action was brought, and the only question was whether the charges were fair and reasonable. A young counsel from town appeared for the plaintiff, and finding it impossible to make the judge comprehend, at last in despair said—

"Well, your Honour, as I cannot make your Honour understand, the only thing to be done is to bring the tiger into court."

"What, sir?" said the judge, with assumed alarm. "A tiger! Certainly not, sir!—a tiger is a dangerous beast."

"But, your Honour," expostulated the counsel, "considering the tiger is dead, it cannot do much harm to you or me."

"Well! well!" said the judge, considering the point, "if that be so, I think I may safely comply with your request, but if you had told me that it was *alive* I should not have believed you. Let the tiger be brought into court."

JUDGE DASENT, whose court was at Shoreditch and Bow, was one of the greatest offenders. His remarks and comments were odd, and the way he would take up and examine a witness on matters absolutely irrelevant to the issue was amusing, but certainly without dignity; his court was one of hilarity. I will do him the justice of saying that he was a good lawyer, and socially a pleasant man.

In a case I had before him—a claim for goods sold and delivered by an East End tradesman—I noticed in the particulars of claim the items were priced at a lower sum than in an account delivered. I pointed out the discrepancy to my client, and the plaintiff explained that the defendant was going to *resell* the goods to his brother, and wished the invoice prices to be increased. I pointed out the impropriety.

"Why, sir," said he, "we could not get on at the East End of London without doing such things. Besides, sir, he *arst* me to do it."

I merely replied, "We'll see what the judge says."

Dasent soon spotted the discrepancy, and pointing it out to the plaintiff, said in a loud voice—

"What do you mean by this, sir?"

"Well, your Honour," said the simple tradesman, "he *arst* me to do it; he *arst* me to do it!"

"Asked you to do it!" returned the judge solemnly. "Asked you to do it! The devil is always going round this great City of London asking people to do it. What will you say, sir, to this at the *great Day of Judgment*?"

I must tell another story about Dasent. In his latter years he had become very deaf, but somewhat intermittently so. Woe betide the counsel who, in an uncomplimentary

aside, reckoned on it. To say "The stupid old fool!" and be asked, "Who is an old fool, sir?" is awkward.

I was at Bow Court one day, and, waiting for my case to come on, amused myself by the old gentleman's vagaries. He delighted to play to counsel. A case was called on in which both parties appeared in person: an action by an agent to recover commission for having introduced to the defendant a partner. In the course of the case the plaintiff called his housekeeper, a prepossessing young woman, as a witness to prove an admission of indebtedness.

The defendant, who had been very virulent, then proceeded to cross-examine her. I could not make out what countryman he was; he drawled out all his words in a curious way.

Defendant. "You sa—ay that you are the housekeeper to the plaintiff." And then, with a knowing look at the judge, "Do your functions end there?"

Witness. "Yes, sir! Certainly, sir! I don't know what you mean."

Defendant. "Now, when we last met," threatening her with his forefinger, "did we not have a conversation about a—dool—te—rie?"

Judge (waking up). "Usury—usury nothing to do with this case——"

Defendant. "I said a—dool—te—rie!" in a rising *crescendo*.

Judge. "I hear you—usury—*nothing* to do with this case; usury laws been abolished these fifty years."

Defendant (in despair). "I said a—dool—te—rie, A—D—U—L—T—E—R—Y."

Judge. "Well, suppose you have been committing adultery!—nothing to do with the case. I find for the plaintiff, with costs."

Mr. Dasent was succeeded by an admirable man, Mr. PRENTICE, K.C., who was also hard of hearing and soon became as deaf as his predecessor. Justice is always supposed to be blind, but to be deaf as well is a calamity.

A distinguished writer turned off some impromptu lines, inspired by the deafness of a great Chief Baron:—

"The plaintiff, John Roe, was deaf as an adder,
 More deaf's the defendant, one Doe—and what's sadder,
 Much deafer than both is the Judge enthroned high,
 This intricate action of Trover to try.
 Roe claimed many drachmas for Rent left unpaid,
 Deaf Doe, in defence, with great emphasis said,
 'It's always by night that my corn I do grind.'
 Quoth the Judge, looking down, 'Why not be of one mind?
 After all, she's your mother; why don't you agree
 To keep her between you, and let the Law be?'"

The Clerk of Arraignment on Assize was swearing the jury, when a jurymen said, "Speak up! I cannot hear what you say." The presiding judge asked him if he were deaf. "Yes, my Lord, of one ear." "Well," responded the judge, "you may go, for it is necessary that jurymen should hear both sides." Another judge, however, on a like objection, said, "Oh! let him be sworn; we only hear one side of a case at a time." These are chestnuts.

SERJEANT WHEELER, of whom I desire to speak with great respect as a learned and delightful gentleman, produced more laughter in his court than any of the judges who succeeded him, though I confess one of them makes a good try. One of his great pleasures was to pun, or play, on names. I heard him once ask a witness, whose name was Sayers, whether he was any relative of Tom Sayers, the prize-fighter. On one occasion I was nearly a victim to his foible. I had frequently been before him at Marylebone, but on one occasion was at Brentford, where he also presided. As I entered the court I heard him dismissing Sydney Wolf, of the Bankruptcy Court, as "a wolf in sheep's clothing." The Registrar, a new one, did not know me, and when my case was called asked me my name. I told him "Crispe." He then said would I write it down. I gave it him on a slip of paper, which he handed up to the judge, who, of course, knew me well. At the same time he said, "Mr. Crispe, sir." "Crispee," said the judge, in an audible whisper. "No, sir, the gentleman said Crispe." "I say Crispee—Crispee!" said the judge, in a rising tone,— "I assure you, sir"—"I say *Crispee!*"

My *confrères* were beginning to chuckle in the jeering way

they have, and there was a rising titter in court. If I did not say something I was lost. Let my young friends at the Bar always say something, on emergency. I therefore rose in my place, and addressing the judge seriously, and in my best manner, said, “I fear your Honour is in some difficulty as to the pronunciation of my name. In my case the Latin rule does not apply, and ‘e’ final is ‘e’ mute.” “Ah!” said the judge, with a twinkle in his eye. “Well——?” He was not going to let me off, so I continued, “Your Honour, being a classic, is probably thinking of Sallust—not the historian, but the wine-bibber, of whom Horace speaks in one of his Odes in the vocative case, ‘*O Crispe Sallustii*.’” I scored; the judge was delighted at the open compliment to his scholarship (no idle one), and he gave me a verdict, in a horse-coping case, which I did not expect to win.

I am afraid I made him angry one day at Brompton. My case was last on the list, the evidence had been given, but he wished a point argued. The witnesses were discharged, and the solicitor opposed to me said what he had to say and then went. The judge and I were practically left alone. I wearied him with my persistency. At last he said, “Sir!” in a voice of irritation, “I have a dinner party at my house to-night, and you have taken away my appetite.” I answered, “Sir! I am glad to say your Honour has not taken away mine.” He then laughed and said, “You’re wrong; but come into my room and we’ll talk it over;” and over a glass of very good sherry he soon talked me over.

JUDGE BAILEY, of the Westminster County Court, was one of the best judges of my early time. He was an instance of how at a great age a man may retain, as in the case of Vice-Chancellor Bacon, all the faculties of judgment and discretion. He must have been nearly ninety years of age when I tried my last case before him. Sometimes, near the end, he was obliged to have a deputy, and one day I found Scott, who had edited “Scott’s Reports” a half-century before sitting in that capacity. I knew him very well, and just as he was rising for lunch told him how well he was looking, and congratulated him on his robust appearance. “Why, Crispe,” he

said, "do you know how old I am?" I ventured to suggest he was getting on. "Yes," he said, "I am 88, and the judge is 89."

On that day his summing-up to a jury was the most laconic I ever heard :

"Gentlemen, I do not know what *you* think, but if you think as I think, *I* think you will find a verdict for the plaintiff." The foreman (of a very common jury) immediately responded : "We does, your Honour, unanimously."

JUDGE HOLL was among the friends whom it was my privilege to number. He was one of those men who might well have adorned the puisne Bench, but a Lord Chancellor picked him up suddenly and gave him the appointment he had not solicited. He took his promotion too early. Socially, he was one of the most delightful of men, kind-hearted and genial. At his town house and at Brighton my family frequently enjoyed his hospitality. He seemed to be a very happy man, and allied to a charming lady, and with ample means it could scarcely have been otherwise. Chichele Plowden in his book writes of his own marriage : "There is no one who is not the happier for being happily married." Having had myself a pleasant experience, I scarcely like to spoil the aphorism by saying, "There are more people married than are happy."

Mr. COMMISSIONER KERR was a remarkable Inferior Court judge, and noted for his dry sayings. He was a pluralist, and not only drew his salary as judge of the City of London Court, but the emoluments of a Commissioner of Assize, sitting at the Old Bailey as a criminal judge, and had a good many other pickings, so that at one time he earned pretty nearly as much as a puisne judge. He was a Scotchman, and woe betide the Aldermen and Common Councillors who tried to pare his income down ; they were babes in his strong hands. He derived his appointment from the Lord Mayor and Corporation of the City of London, whom he dominated by the power of his will, but with whom he had frequent conflicts. He had one peculiarity : he never would decide a case where the

evidence was oath against oath ; he always adjourned it for a jury. He was sarcastic, and sometimes flippant and ill-natured.

Commissioner Kerr was a terror to the young counsel at the Central Criminal Court, personal in his remarks, and occasionally offensive. A display of jewellery would put him in a fever.

"What have you got there, sir?" he would say in a broad Scotch accent. "What have you dangling from your waistcoat? A gold chain, is it, and a watch? Eh, sir! put it away, cover it up; this is not the place for a display of trinkets."

Of course, he had the warrant of the High Court judges, some of whom are afflicted with blindness and cannot see a counsel who has not his wig and robes on, or hear him if he wears a white waistcoat. I recollect a "newly fledged" coming into court displaying such an atrocity. "I cannot hear you," said the judge. The counsel raised his voice. "I cannot hear you," the judge again said; "I tell you, sir, I cannot hear you." The poor fellow shouted. "Button up your coat," said his leader; and to his surprise he found the judge could both hear and see.

At Lewes Assizes I remember Hope, a bit of a dandy, attempting, with a flower in his coat, to address Mr. Justice Denman. "I cannot hear you," said the judge. Hope went on, in a voice which might have been heard outside the precincts of the court. Again the same formula, and at last Denman said, pitying the counsel's distress, "You compel me to speak, Mr. Hope. *I do not allow 'button-holes' in my court.*" Away went the rose.

Whatever may have been said of Mr. Commissioner Kerr, I confess I had a liking for him and entertained a great respect for his undoubted ability. He was cynical and brusque, but beneath the husk a tender kernel.

J. J. POWELL, one of my old friends at the Bar, was appointed a County Court judge, but his work for a long time was done, and very well done, by his deputy and nephew, Arthur Powell, now K.C. Powell was a great favourite, and

his cheery, breezy manner told with a jury. Short in stature, with a bull-set neck, and a face in colour peonytic, he lacked presence—but his sparkling eyes, speaking lips, and great animation redeemed him from mere commonplace. His excitability was intense.

I offer two vouched anecdotes of him showing his sense of humour. At the time I refer to, there were a good many shady scoundrels who practised ostensibly as solicitors without being on the Rolls, and they did this in the name of some broken-down and probably reprobate attorney. The result was that in the north, east, south, and west "Hills & Co." seemed to be doing a thriving trade. Several men practised in the name of Hills, who was compensated by a royalty. Hills was seldom seen in court. This soon became a matter of comment, and one day, in a case in which Powell was engaged, the absence of Hills was referred to by him.

"What is Mr. Hills?" said Powell to the jury. "Where is Mr. Hills? Who is Mr. Hills?"

A blear-eyed, shabby-looking man got up in the well of the court and solemnly said, "I am Mr. Hills."

"My Lord! my Lord!" said Powell excitedly, "*let him be marked as an exhibit!*"

On another occasion I remember his representing some solicitors of evil repute, and who were ultimately struck off the Rolls. When I went into court Powell, in the frankest manner, said, "Hulloa, Crispe! I'm against you, and I don't mind telling you, I've a damn black case and damn black client, and they've given me a damn black man as a junior." It was a fact. The junior was a good-looking Creole, who had a brief career in the English courts.

There is a good deal of colour in my Inn, in various hues. Not only have we the largest contingent of the great races over whom "Edward Emperor" reigns, but West Indians, Japanese, Siamese, and Negroes. It is not long since that a man whose proportions were grand and whose face was ebony, accentuated in colour by the whiteness of his teeth, was very much in evidence in Fountain Court.

Mr. STONOR, Mr. MEADOWS WHITE, and Mr. EDIS were

among the judges who adorned the Metropolitan Bench, all very excellent lawyers.

Of the provincial judges I had but little knowledge, but I was often before Mr. ABDY, who was an excellent scholar and on some occasions was Gresham Lecturer. He was a capital judge. He told me a good story of "bribery after the event." In an action brought by a pork butcher the judge had decided in the plaintiff's favour. At that time the judge had a new cook, and he found that every morning he had sausages for breakfast. At last he suggested to her a little variety. "Lawks, sir!" said the cook, "I thought you liked sausages. I forgot to tell you, sir, that Mr. Smith left a box of them, with his grateful thanks!" Smith was the litigant.

JUDGE FRENCH was one of the County Court judges of whom I may make mention; a very sound commercial lawyer, who commenced his career as a solicitor. He distinguished himself on the Bench by the rapidity with which he tried his cases. Woe betide the counsel who elaborated. He disposed of his work with such expedition that he usually finished by two o'clock. His quickness of perception was marvellous. Counsel used to grumble at him for hurrying, but he was always so good-tempered one could not be offended with him. I came across a scrap the other day which illustrates the polite way in which we treated each other.

BENCH AND BAR: AMENITIES.

At the Shoreditch County Court, before his Honour Judge French, K.C., a case was heard in which Mr. Crispe, K.C., appeared as counsel, and drew his Honour's attention to a point of law.

His Honour. I am sure, Mr. Crispe, you know more on that question than I do; let me hear you.

Mr. Crispe. I would not like to suggest to your Honour—

His Honour. I would be *glad* to hear you on the point.

Eventually his Honour, in giving judgment, asked Mr. Crispe if he thought the figures correct.

Mr. Crispe. I am satisfied with whatever amount you award.

His Honour. But I think that sum about fair, don't you?

Mr. Crispe. Could I say otherwise?

His Honour. I mean, I think that's about right, don't you?

Mr. Crispe. Whatever your Honour decides is right.
(Laughter.)

His Honour (smiling). Thank you, Mr. Crispe."

Sir John Day, among his other manly accomplishments, was a fine diver, French a good swimmer. I saw them one day at Eastbourne under odd circumstances—both with nothing on save bathing-drawers. Simultaneously Day clambered up on one side of a floating platform, French the other. They were both tall, gaunt men, and both near-sighted. They glared without recognition, turned their backs on each other, and plunged off in opposite directions. They met afterwards on *terra firma*, and Day induced French, a poor horseman, to go out riding, with the result that poor French was brought home with a broken collar-bone.

JUDGE WADDY (Samuel Danks), a notable man of his day, who ended his life as a County Court judge, was a powerful advocate, an ardent politician, a Nonconformist, and a preacher. Among some of his professional brethren he was not liked—distrusted by many. I speak only of men as I found them, and in him I found no cause for distrust. As a leader he always took his fair share of the work, and was very kind to his juniors.

I recall a special act of kindness to myself. In some cases, referred to in my short memoir of Mr. Justice Field, Waddy led me, I holding the brief of Mr. Kemp, for whom I was then devilling. The judge showed a strong bias in favour of the defendants, a Railway Company, and was very angry at the jury finding in favour of the plaintiffs—the defendants obtained new trials from a court in which Justice Field was a member. Prior to the new trials Mr. Kemp had taken silk, and his clients honoured me by giving me the junior briefs. They had a very large litigious practice. One morning, as the cases were proceeding, and nearly at a close,

Waddy said to me, "I am sorry, Crispe, I cannot be with you to-morrow. I warned our clients that I must be away on a reference in the North. Now I know how important the matter is to you, and that if you lose the cases you may lose your clients. I'll tell you what I will do; I will get a friend of mine to get up the cases thoroughly, and finish them for me; if he loses you'll not be blamed, or—I will leave you alone." I said, "Thank you, Waddy, I am not afraid." So he left me.

I won both cases, and retained clients from whom I subsequently had over five hundred briefs. It showed how considerate and kind-hearted he was.

One man had a particular dislike to him—Mr. Ambrose, Q.C., afterwards Master in Lunacy. I witnessed a *rencontre* between them in a corridor of the Old Courts at Westminster, when I thought they would have come to blows. Ambrose was evidently furious at what he considered some breach of good faith, and his eyes went up like the movable eyes of a wax doll. Waddy looked equally aggressive, and the end of it was Ambrose challenged Waddy to fight a duel. It never came off.

Waddy was always on excellent terms with his lay clients. I recollect once, in one of our cases, an old lady, for whom he had obtained £400 damages, thanking him very heartily, but somewhat inconsequentially. "Oh! Mr. Waddy," she said, "I am so *very* much obliged to you, in fact I am quite *agreeably disappointed*."

An instance of perfect faith in him was shown in a case of Harris, I think, against the General Omnibus Company. Mr. Harris, who was a Jew, had been knocked down and severely injured—he said by one of the Company's vehicles, but he had not the slightest corroborative evidence. Some few so-called witnesses had been obtained by advertisement. We had not a chance, but Waddy always worked a losing case thoroughly, and made a vigorous address to the jury. The judge finished his summing-up at adjournment time, and the jury retired to consider their verdict. After my lunch I returned, and found Mr. Harris in the well of the

court, with his head leaning forward in his hands. I said to him, when I got his attention, "Well, Mr. Harris, I am afraid you must prepare yourself for the worst." "No, sir," he answered; "I have taken the opportunity of this adjournment to pray to Father Jehovah to put the words of Mr. Waddy into the hearts of the jury."

I replied, somewhat irreverently, "I fear, Mr. Harris, that even if Father Jehovah were to send his Angel Gabriel to the jurymen they would still find against you." They did.

My reference to the Angel Gabriel reminds me of a story of an American advocate, one Mason, who was defending a Methodist minister on a charge of murder. A fellow-minister, who was a spiritualist, came up to him in a state of great agitation. "Mr. Mason! Mr. Mason! I have a most important matter to communicate—the Archangel Gabriel came to my bedside this morning and told me that brother Avery was innocent!" "*Let him be subpœnaed immediately,*" said Mason, without looking up from his papers.

I cannot leave "Samuel Danks" without another story as to how he, with my aid, saved the life of a child. I was with him in an action against a Tramway Company. The plaintiff, a pretty child of four or five years old, brought an action through her father, as next friend, to recover damages for negligence. Both her little feet had been cut off. My clients, who had a good idea of stage effect, had the child carried in and placed in a prominent part of the well of the court. She was prettily dressed, and her hair neatly plaited. The child was smiling and cheerful, and her little stumps in full view of the jury—it was excellent business. The jury awarded her £400. Her parents were in humble circumstances, and her father looked delighted at the wonderful fortune he hoped to handle. He did not look so happy when Waddy suggested to the judge that the money should be placed in the hands of trustees for the benefit of the child. The suggestion was adopted; trustees appointed, and the money invested.

About a year after the trial Waddy's clerk brought me a message that Mr. Waddy wanted to see me. I went round

at once, and found in my friend's room a man whose face was familiar to me.

"Ah! my dear Crispe," said Waddy, "very good of you to come round. This is Mr. Mole, father of the little girl for whom we got £400. He has put a question to me on an intricate point of law, and I thought I should like to have the benefit of your opinion."

He looked very grave, and I put on an air of gravity.

"Well, Mr. Mole wants to know *to whom the money will go if the child dies.*"

I tumbled to the position at once, and said—

'That is a very serious question—we shall have to consider the Statute of Abuses.'

"Yes," continued Waddy; "and how are we going to get over 'Car. 2, chap. 3?'—Caroline the second. There must be some limitation——"

"That seems fatal," I followed, with difficulty restraining my laughter. "Would it not be as well for Mr. Mole, in the event of the child's decease, to apply for an inquiry, and obtain the Royal Grant?"

"That would never do; the costs would eat up the estate, besides a manifest escheat to the Crown."

"What is that?" interposed Mr. Mole, who was looking sad.

"Oh," said the unblushing Waddy, "that means that the Crown would cheat you of all you had."

And so we went on. At last Waddy gravely summed up the case, and expressed an opinion, in which he said his learned friend coincided, viz., that should the child unhappily die, the father's chance of getting the money would be remote, and adding, "You would lose the interest of the money, which otherwise you will receive until your daughter is twenty-one years of age."

"Thank you, gentlemen," said Mr. Mole, with a sickly smile. "I am sure I hope the dear little thing will live! Good-day, gentlemen." When he had left the room, we burst out laughing. At last I said, "You old scoundrel, what have we done?" "I'll tell you," said Waddy; "*we have saved that poor child's life.* And now, my dear Crispe, have a glass of port. We've earned a refresher!"

CHAPTER XIII

OFFICIAL REFEREES AND MASTERS

THE formation of the Court of Referees was a blow to the counsel who were seen more in chambers than in court, and who were frequently appointed as arbitrators. But it has proved a court of great convenience and relief to the Supreme Courts.

Since its constitution there have been but few Referees. The work seems to have agreed with them. The power which they enjoy of following a case, instead of its being brought to London, gives them many pleasant outings. I remember an instance, a delightful fortnight at Hastings, where I was opposed by Vaughan Williams—now Lord Justice—of whom I should like to say a great deal, but dare not under my rule.

The referee, Mr. ROUPELL, enjoyed himself immensely. He smoked his pipe in the grounds of the house where the inquiry was held, kept strictly to London time, did not overwork us, and stationed himself at the best hotel—all expenses being paid for himself and his clerk, a very decent fellow. We had even difficulty in tearing him away from the seaside.

Mr. Roupell was a tall man, with a very long nose, out of proportion to the other features of his face. He had a mania for drawing noses, and with his pencil was a forerunner of Lockwood in caricature. He would appear to be writing in his note-book, when in fact he was taking pen-and-ink portraits of the counsel before him. Excellent likenesses save that he *transferred* the noses—to each man with a small nose

he gave an enormous proboscis, a snub was elongated to an elephant's trunk, a Norman reduced to a snout. I daresay I shall be accused of trivialities, but life is full of trivialities—and even the Bar is somewhat frivolous. The effect was extremely funny. If any of his note-books got into the Divisional Court, which they occasionally did when a judge desired to see an original note, there was an unseemly display of levity in that otherwise decorous assembly.

The business of Official Referee requires a specially trained mind. He must have almost as good a knowledge of figures as a chartered accountant; he must understand engineering, mechanics, and be of a scientific turn; he nearly a quantity surveyor, and able to cube out the value of a building. A great deal of his work is, happily, much lighter than that indicated. In these courts and in the Commercial Court there is less perjury than in the High and County Courts.

RouPELL was a great stickler at getting the truth, and if a litigant voluntarily gave evidence against himself, he was that man's friend throughout. I had a long reference before him, in which an action had been brought by a *bric-à-brac* man against a well-known baronet. The man had heard of RouPELL's affection for veracity and purposely made a mistake to the extent of £50, which could not be challenged. Neither the referee, the opposing counsel, nor myself did or could discover it. When the reference was nearly over—it had lasted a fortnight or so—my client saw RouPELL privately, and told him that he had discovered his mistake, and the referee promptly struck out the £50; but he was much struck with the frankness of the man and his apparent honesty and believed him so thoroughly as to the rest of his claim that he gave him some hundreds more than I thought he deserved.

Mr. HEMMING, K.C., was another notable member of the court, a great Chancery lawyer. His personal appearance was not in his favour. His wig was usually more black than white and sometimes half off a shaggy head—his bands soiled, and a thick beard and moustache of coarse hair was kept singularly unkempt. Added to this, he possessed nothing of the gentle demeanour of Chancery. He was absolutely

without polish. When he was at the Equity Bar, it is told that his clerk and another were discussing the merits of their respective masters. Hemming's clerk said, "Our law's very good, but our manners *is* beastly!"—the story probably invented.

Daily had he to listen to things which he did not understand, but he always determined to master them; if he could not comprehend, he got irritable and angry with the witness or counsel who failed to make him understand. The result was an inordinate amount of time wasted. Whether it was liked or not, he would take a witness out of counsel's hands and examine him himself, often at great length. There were many conflicts, and he was rude to a degree, but he was one of the best fellows alive, and his awards were seldom upset.

I got on very well with him, and my previous training enabled me to put matters in a clear way. Under protest of my opponent I often, unsolicited, went on to the referee's platform, and with my hand familiarly on his shoulder solved his difficulties as to a plan and its sections or disposed of the intricacies in accounts or measurements. A client of mine once said to me, "Why, Mr. Crispe, you treat him like a father!" Well, that was management. I have already advised young counsel to learn their tribunal, and act up to their knowledge. His habit of interposing in the examination of a witness was vexatious. It was no use objecting; you were always met with an impatient "Pshut!"

On one occasion, in the "Stroud Water Case," which lasted twenty days, I was examining the plaintiff, who was a contractor for the works, when at eleven o'clock I put a question. Before the witness could answer Hemming called him up to him. In front of him a pile of plans, drawings, and columns of figures. For two hours he examined that witness; he got at the marrow of my case; he was doing me good all round, putting questions I could scarcely have put, although more latitude is allowed in Reference Courts than in the High Courts. The defendant's counsel was wild and begged me to keep "Hemming in order," but I was mute until one o'clock,

when I said, "And now, sir, I think the witness may answer my question." The referee grinned, and eventually I sailed off with a £4,000 award.

Mr. VESEY, the senior member of the court, a son-in-law of Lord Chief Baron Kelly, obtained his appointment in 1876. He has, therefore, been thirty-three years in harness—the "doyen" of the Referees. I am glad to see he still does his work in his old cheery manner.

Mr. RIDLEY [now Mr. Justice Ridley] showed such marked ability in his capacity as Official Referee that he obtained the almost unprecedented honour of transfer to the High Court. Mr. POLLOCK, of the illustrious strain, who would probably have been on the Bench had it not been for the sad loss of his voice, and Mr. MUIR MACKENZIE, who before his promotion was monarch in Bankruptcy, share honours with Mr. Vesey.

In my humble opinion, I think that promotions such as that of Mr. Ridley might with advantage be more frequent. When we see such men as Sir F. A. Bosanquet and Judge Lumley Smith in honourable but inferior positions, we cannot help feeling that although merit may have its own reward, it is in these days a very unmarketable commodity. It also seems to me that the officials under the rank of puisne judges are treated in a niggardly way which the public on the part of their servants would not desire. Their salaries are not exorbitant—£1,500 a year for County Court judges, Official Referees, and Masters, and without pension on retirement. In some cases where there is a health breakdown an allowance is made, but there is no "pension of course." That a public servant should devote his life for years to the service of the public without the certainty of a pension seems a scandal.

The MASTERS connected with the Supreme Court are, with the exception of the judges, the most useful body. The work is that of routine, the charge of all the interlocutory matters which fit a case for trial. In a morning at chambers a vast number of summonses are disposed of. Everything is done rapidly; there is no time for consideration; the Masters decide; not only counsel appear before them, but solicitors,

and also their clerks—a body of men who, as a rule, show great intelligence. There is appeal to the Judge in Chambers, who, if he knows his Master, usually follows him. There is further appeal to the Court, but very seldom is the order of a Master upset. Occasionally they have a reference; one of their duties is fatiguing—the taxation of costs.

The appointment of Master is in the gift in turn of the Lord Chancellor, the Lord Chief Justice, and the Master of the Rolls. With the enormous patronage of the Lord Chancellor this small item might well be dispensed with. As at present constituted the Masters form a Court of Intelligence of considerable strength, from the Senior Master—Master Mellor—down to the last appointed. The blood of judges is in the veins of many of them.

Of bygone Masters I have but little to say; there were but few eccentrics among them.

MASTER GORDON was one of the exceptions. This Master was very fond of interrupting in a case by giving a long anecdote with no point in regard to it. One day I was before him, and he interposed in this fashion:

“When I was a boy I was lost on Banstead Downs; the snow covered the ground. I was wet, weary, and hungry. I wandered on, the thick snow blinding me with its drift. When I thought that all was lost I saw in the distance a flour mill, the sails of which were flapping in the wind. At last I reached the mill, and the miller’s daughter——” and so he meandered on.

As an instance of irrelevancy, my old friend Winch, who, if he had lived longer, would have made his mark, was arguing a case we had before Gordon. We were only separated from the Master by his table. Winch was getting angry because Gordon seemed to be dreaming. At last Winch got up, and, placing his hand on the table, said something in a high tone: “Dear me!” said the Master, “what a very nice hand you have, Mr. Winch!” I expect at the time Master Gordon was failing, as I had always had an excellent account of his ability.

We had a dandy Master once—MASTER AIREY—who

moved in Society, and wore the most splendid rings on both hands. He increased the consumption of coals in the courts, and winter or summer had a fire in his room. We used to resent this in July, and sometimes to protest ; but it was useless, he only roasted us the more.

CHAPTER XIV

ADVOCATES AND LEGAL WITS

OF the brilliant advocates and legal wits of my time who did not attain the dignity of the Bench, I make selection of a few for rapid sketches.

SERJEANT BALLANTINE was perhaps the most remarkable. I made his acquaintance when I joined the Home Circuit. While a student, I had frequently heard him in cases and incidentally had learned a good deal about him. His jokes and witticisms were repeated at Bar mess, and a good many stories told which indicated that he had been a lively and a loose fish. No man had probably had a longer and more profitable career, in a pecuniary sense, at the Bar. No man was probably more liked or less respected. He had better chances of success than most of his compeers. Some of his rivals at the Old Bailey gained the highest prizes. Huddleston became a Baron of the Exchequer—Hardinge Giffard obtained the coveted woolsack—Harry Poland was knighted. Ballantine was generous and extravagant to a degree, and he lacked ballast. He was a man of pleasure and had dissipated more than one fortune.

He received on one occasion the phenomenal fee of 10,000 guineas—enough to have made him comfortable for the few years he had to live. That was in 1875, when he was getting to the end of his career. The brief was to defend the Gaekwar of Baroda, his Highness Mulhar Rao. It was said that either the money he received was hypothecated before he left England, or that he lost it in rash ventures soon after his return. The brief had been offered to Mr.

Hawkins [Lord Brampton] and to Mr. Henry Matthews [Lord Llandaff] and refused by both. His defence of the Gaekwar was not considered a success. The charge preferred was an attempt to poison Colonel Phayre, the Resident at Baroda, but, although Ballantine did not obtain an acquittal of his client, the Commissioners were divided in opinion, and the proceedings were terminated by a Proclamation deposing Mulhar Rao, on the ground of abuses previous to the inquiry.

A year before this Ballantine was waning. At the Bar mess at Maidstone, in 1874, I watched him playing cards; he was a great whist-player, and a member of the Portland Club; on that occasion his skill forsook him. He revoked more than once, and lost his money with ill grace, which was unusual for him.

The Indian trip practically finished his career. I have a story to tell about the Gaekwar case, which I have often told, but cannot vouch for.

In the Serjeant's *Experiences of a Barrister's Life*, he writes naïvely enough of his professional voyage. "I gave myself time to enjoy a dinner in Paris." Whether at the Bar mess he gave the boys any of his racy experiences in that seductive capital I know not, but the story as having been told by Ballantine himself was passed on to me. I may premise that Ballantine was an indifferent lawyer, and seldom looked up precedents.

Well, be it as it may, his clients, so it said, knowing his failing, sent him a small library of books on Indian Criminal Jurisprudence—but I must let the Serjeant tell the story in his own way.

"When-ar," said he, in his slithering, hesitating manner, "I was-ar briefed to defend the Gaekwar of Baroda, my clients sent me a lot of books on Indian law-ar, in a mahogany box. On my way to Indi-ar, I put in a few days at Paris. One morning I said to Hilary, my juni-ar, who accompanied me, 'My de-ar boy, just go out and buy me a nice selection of French lit-e-ra-ture; you know the style I like—yellow backs, just a little warm—and buy a good many of them,

we are in for a long journey'—and begad! Hilary came back with the nicest selection of French lit-e-ra-ture you could possibly imagine: Paul de Kock and Guy de Maupassant, and so on. Well, we didn't know where to pack them, but all at once I thought of the mahogany box, so we turned the law books out and we put the French books in——" The Serjeant paused.

"And what became of the law books?" said one of his listeners.

"*Ah! begad,*" said the Serjeant, "*I quite forgot to in-qui-ar.*"

On his return to England his business was practically gone, and Worcester, his clerk, a well-known character, had almost to tout for briefs, and he, the envied among his fellow-clerks, who would look with scorn at a fee of less than three figures, was glad to get a brief at any price. So it happened that I found myself one day junior to the Serjeant with a miserable 7 and 1 in an action for breach of promise—*Barnard v. Marks*. I present this case, because in its subsequent developments comedy developed into tragedy.

I must narrate what had occurred prior to the action being brought. Miss Barnard, an exceedingly pretty Jewess, the daughter of an umbrella manufacturer in Newington Causeway, was taking, with her people, a summer holiday at Margate, the favourite haunt of Israel. On the beautiful sands, and near the jetty, she met Mr. Marks, a fairly well-to-do tradesman, who carried on business as a picture-frame maker, in Newman Street, Oxford Street. With the *camaraderie* of race, of which on his part there was sufficient facial proof, introduction was dispensed with—he spoke, she listened, there was a flirtation. He told her frankly his position in life, and she, with some timidity, gave him her father's address. He was a mere tripper and she saw him off at the station. On the return of the family Mr. Marks called on Mr. Barnard, with the result that a solemn contract of betrothal was entered into between the young people according to the Jewish fashion.

All went well for a time, when unfortunately Mr. Marks had a stroke of good luck. *He had a fire*, his premises

were burnt down, his stock-in-trade destroyed. Now the Jews, as a rule, are a very law-abiding people ; they seldom commit great crimes, and so far as morality is concerned, you rarely see them in the Divorce Court—in that respect they wash their soiled garments before the Rabbi. But they have, at least some of them, a mania, an uncontrollable impulse, to put their lares and penates to a fiery ordeal. With this curious disease it was suggested some time afterwards that Mr. Marks had been inoculated. By a strange coincidence, however, he had insured heavily against the chance of their destruction.

Whether the financial result of his prudence encouraged him to hope that he might now aspire to something more “West End” than the Hebrew maiden of Newington Butts, was not clear, but he shortly afterwards broke off the engagement. He did more—he demanded back some handsome presents he had made. She, poor girl, had given him a few useful ones—umbrellas out of her father’s old stock ; “A belle and beau would courting go.” His gifts included some paintings—valuable paintings by old masters, ancient artists of the “Wardour Street” period. Miss Barnard refused to surrender them. They were *gages d’amour*.

Mr. Marks then took out a summons at the Lambeth Police Court, *in detinue*, for return of the paintings. I was instructed to oppose. The police magistrates, although the detention of goods is not a crime, have power to deal with claims of the kind, but their jurisdiction is limited to goods not exceeding the value of £15. I soon made short work of Mr. Marks’s claim, as he valued one of the items at £20. The jurisdiction of the court was ousted, and the summons dismissed. Not dismayed, Mr. Marks took the opinion of a judge and jury at a County Court, but with the same result, and he was mulcted in the costs of the two proceedings. Miss Barnard kept the pictures, and Marks had certainly acted shabbily.

Then came reprisal—the action for breach of promise. The trial came on in the old courts at Westminster, before Mr. Justice Quain and a common jury. As junior it was my

privilege to examine the plaintiff—I took her through her facings in light airy manner, and having elicited the *rencontre* on the sands, the flirtation which ensued, and the departure of the love-stricken Israelite, I said:

“And after that, Miss Barnard, on your return Mr. Marks was frequently seen hovering about your father’s house?”

Mr. Justice Quain, interposing, “Mr. Crispe, I must ask you not to put leading questions.”

The Serjeant, after a pretended whisper to me, “My Lud, I have told my learned juni-ar that he is not to draw upon his *own* experience.”

This raised a laugh at my expense, which the dailies reported as loud, and I was for a time subjected to the witticisms of the facetious crew with whom I took my commons. As this was the last joke I heard Ballantine make, I record it. There was no defence, and Miss Barnard got a verdict with damages and costs.

Up to this point the run of events had been funny and farcical. Now came the tragedy. Marks paid neither damages nor costs; this naturally exasperated the Barnard family, and Frederick Barnard, a brother of Miss Barnard, made some inquiry, which led him to believe that Marks had committed arson. He communicated his suspicions to Marks, and threatened to put the Insurance Company on the alert, unless he settled with his sister.

A few days afterwards, in the broad daylight, in a back street in the Borough, *Marks shot Frederick Barnard dead*; three bullets from a revolver passed into the body of the poor fellow.

I took part in the police proceedings, and at the Central Criminal Court, before Baron Pollock, I prosecuted on the part of the Crown, Mr. Horace Ivory being with me. The prisoner was defended by Douglas Straight (now Sir Douglas), who made a gallant defence. The only plea was that the man was mad when he committed the crime. Marks was a Polish Jew, and numerous witnesses were called to show he was eccentric, and not a few who deposed that he was known as “Mad Marks,” while from abroad a batch of Poles were

called to give evidence that there was insanity in his family. Notwithstanding Mr. Straight's great exertions, Marks was found guilty of murder, sentenced, and hanged.

I know that his counsel was much disappointed at the result, and in his kind way did all he could to obtain a reprieve. In a pleasant letter I had from Sir Douglas recently he wrote, "I moved heaven and earth at the Home Office to get him off." He failed, and Mr. Calcraft, the genial hangman, was not disappointed of his prey.

Of Mr. Calcraft, Ballantine writes: "He was accustomed to present himself after dinner on the last day of Sessions. Upon his appearance he was presented with a glass of wine. This he drank to the health of his patrons, and expressed, with becoming modesty, his gratitude for past favours, and his hopes *for favours to come*."

My own view was that Marks was mad. The opinion did not affect me, as I have always felt that where there was motive for crime, madmen should not in all cases be spared. I deal with this fully under the heading "Criminal Lunatics."

Baron Pollock, one of the most delightful of past judges, whose knowledge of the law was, to coin a word, "Pollockian," directed the jury in a way which induced them to bring in a verdict of murder. Douglas Straight did not like the direction, and was wroth with the Judge for not assisting him before the Home Secretary. Personally, I had very little criminal practice. Criminal lawyers are sometimes considered callous—I do not think so with justice. I am very sensitive, and yet the fact that a man owed his death to my bringing home his criminality would not disturb me, but if I defended him—as a fact I never did defend a murderer—I am sure I should feel the strain of the responsibility. I am convinced this feeling generally exists.

I recollect an instance, in the case of a fellow-member of my Inn—Geoghegan—who, in his time, defended more murderers than any other counsel. He was always terribly affected with the fear that he might not get his man off. At the Bar mess I have seen him quite unstrung at the doom possibly awaiting to-morrow the poor wretch he could not save. To

cheer him up we used to put a bottle of port on the table, beyond the liberal wine allowance of the Inn.

It must be a trying ordeal to the Judge who, assuming the "Black Cap," passes sentence of death in the awful words, "*And the sentence of the Court is that you be taken from hence to a place of execution, that you be there hanged by the neck till you be dead, and that your body be buried within the precincts of the prison in which you shall have been last confined after conviction—and may the Lord have mercy on your soul.*"

The Chaplain says—Amen.

Of course it is not *his* sentence—it is the sentence of the law, but there must be horror in delivering it. No wonder our judges are so much affected ; but there is no help for it—some one must do it.

I must, however, admit that there is, or used to be, a little too much festivity on the occasion of a murder case at the Old Bailey. I recollect how sumptuously regaled I was on the occasion of the trial of Marks. He had a long and patient hearing. On the third day, I commenced at ten o'clock my reply to my opponent's exhaustive speech. At one, I was just finishing when the Baron interposed and asked me how long I should be. I took the cue and answered, "A short time longer." "Then we will adjourn," said his lordship. The hospitable sheriffs provide lunch every day, and any counsel in an important case is invited. At lunch the Baron said to me, "Well, Crispe, I'm glad you did not finish before the adjournment. You know why!" I knew—but kept the knowledge to myself. Meanwhile the jury also are being lunched ; they want it. For days they have been isolated from their fellow-citizens ; have been no longer free men—literally locked up. Perhaps, if a Sunday has intervened, they have been allowed a carriage drive, but their liberty has been as much under control as that of the prisoner. They must have no oral communication with the outer world. Truly their remuneration has been accumulating ; they will get it all at once—a few pence, which, as a rule, they give to the usher, who pays them. Poor compensation for absence from business, and perhaps loss of it ! The juryman pays a

heavy penalty for the duty he owes to his country. Surely such a scandal should be a matter of reform.

To judges, barristers, and officials the sheriffs made things very pleasant. Added to the daily lunch, a banquet was given on the premises on Wednesday, to which, in murder cases, the counsel engaged were invited—a most hospitable board. The Ordinary said grace, the viands were excellent, the wines of the best, the Havannahs fragrant. At the banquet, on the day Marks was sentenced, I remember, with that curious brain retainer which stores trivialities, a delicious confection of Mandarin oranges; the conviviality, too, was infectious, and yet hard by, in Newgate, within a stone's throw—*the prisoner in the condemned cell*. Well, I suppose it is a matter of trade, and that the parson enjoys his crusted port no matter the number of his burials, and the surgeon his supper whether he has been scalping, vivisectioning, or dissecting.

“The hungry judges soon the sentence sign,
And wretches hang, that jurymen may dine.”

This has been a long divergence from Serjeant Ballantine. I affect no order in this book—not even chronological sequence. When I start upon a subject, and another arises out of it I give it—as the judges often warn us—“*meo periculo*.”

I have said that the famous Indian case practically ended the Serjeant's professional career. In 1882 he wrote his great book, which had a huge circulation; but even then his memory played him tricks, and every edition had its postscript—chapter after chapter of corrections. There was a good deal of virulence in his book; he attacked judges and others—Lord Chelmsford because he had refused him a patent of precedence; he wrote of Lord Campbell's “superficial veneer of forced politeness, natural bad taste, and peevish temper,” and because the great judge had said “the Serjeants were a very degenerate race” he cited a retort “that Campbell had got on as much by trickery as by merit, and that he was the greatest jobber that had ever flourished

at the Bar"; Lord Tenterden was described as "a sour old man, with the manners of a pedagogue."

Wakeley, the well-known coroner, was the subject of his spiteful pen. He refers to a case in which Mr. Wakeley was plaintiff against the County Fire Office, and inferentially accused him of arson. "He recovered a verdict," writes the Serjeant, "*but I believe the damages were never paid.*" He then emphasises his inference by the following anecdote.

Wakeley was returned to Parliament for a Metropolitan borough, and some one, alluding to a speech he had made, remarked to Sheil, the Irish orator, that "he would never set the Thames on fire." "No," said Sheil, "*unless he had first insured it.*"

After the appearance of the first edition of the book Messrs. Potter and Landford, who had been solicitors to the then late Mr. Wakeley, wrote to say the damages *were* paid. Nevertheless, in every subsequent edition Ballantine continued the libel, but with a simple correction in another part of the book, and without apology.

I have always thought such post-mortem defamation should be the subject of action to those to whom the good fame of their father or husband was perhaps their dearest possession, and although multiplication of causes of action may be against public policy, yet I think the rule contained in the maxim, "*Actio personalis moritur cum persona*," might well be relaxed.

Ballantine then went to America and gave readings from his book. But he was a failure. Montagu Williams, who knew him better than I did, says that a New York paper described his entertainment as the "Reminiscences of a Serjeant who had lost his memory." He returned to this country broken down in health and pocket, but by the aid of generous Montagu, and some other faithful friends, his last years were free from want. He died at Margate in January, 1887.

SERJEANT PARRY was of a different stamp. He, also, was a Home Circuit man. The Serjeant was one of the most charming men I ever met. As a *raconteur* at the circuit mess he was the best teller of good stories, not confined to

mere Bar anecdotes, for he, like myself, had had an experience outside the Bar. He had held an official position at the British Museum, and in such connection had acquired literary tastes. He was a great friend of Panizzi's to the end of his days. I am not sure whether he ever acted, but he lectured, and when I was Vice-President of the "Marylebone" he gave us a lecture on the *Oratory of the Bar*. He also lectured on the "Pulpit" and the "Stage." He was a sound lawyer, but it was in his advocacy his great talent lay. His style, assisted by a handsome presence, was, in a word, manly. Scorn and disdain, when occasion required, played on his expressive features with convincing power. Judges and juries trusted him. There was force in all he did, but while he could be great in invective he could be equally convincing in pathetic appeal. He always seemed to *feel* what he was saying, and when angry or excited, a curious play of his forehead showed the intensity of his emotion. Add to this some wit and humour, and you have Parry. In the first vigour of life, and at a time when he might well have expected judicial preferment, he was carried off by a fever he contracted in an ill-drained house.

His lamented death was the cause of profound grief to all who knew him.

His Honour Judge Parry kindly gives me an anecdote his father used to tell with gusto, and of which I had not heard. On a visit of the Serjeant to a "Police Ball," at Maidstone, accompanied by his wife, the constable at the door asked the names, which he gave as "Serjeant and Mrs. Parry." This was not good enough for the man, who looking at the portly figure, flung open the door and announced in a loud voice, "*Mr. Hinspector and Mrs. Parry.*"

CHAPTER XV

ADVOCATES AND LEGAL WITS (*continued*)

FRANK LOCKWOOD was one of my early friends. I have devoted a few pages to him in a previous chapter. I dealt then with Lockwood the actor; I now offer a short sketch of him at the Bar. Those who would like to know more about him can read Mr. Birrell's Memoir of the distinguished advocate; not that I think it does my friend justice. It is strange—a man is a brilliant wit, and yet the record of his witticisms is limited to a few instances. Lockwood was undoubtedly a witty man; you went to a court where he had a case, to be enlivened: he brightened up the work, you felt in a cheery atmosphere, and yet I think there is only one instance of Lockwood's humour recorded in Mr. Birrell's book, and which I venture to give.

It was an early flash when, on an application to the Master of the Rolls for payment of money out of court, Lockwood, with a small fee on a complimentary brief, had merely to consent.

"What brought you here, sir?" said Lord Romilly testily—"What do you come here for?"

Lockwood, with a rapid glance at his brief: "*Three and one, my Lord!*"

He had wit, however, literally at his fingers' ends—his pen-and-ink caricatures were marvellous, done rapidly, on any odd scrap of paper, with some witty words at the foot. I was twice made his victim. In a case I had against poor Lawson Walton, who died Attorney-General, he was leaving me in the

lurch for want of an admission I thought I was entitled to have. Addressing a Mayor's Court jury, in highfalutin style I said,

"Gentlemen, I have thrown down the gauntlet to my learned friend, and he is leaving the court without daring to pick it up!"

A picture of "Crispus" throwing down an enormous glove in an instant appeared on a sheet of blotting-paper. On another occasion the news of the death of one of my best clients had been bruited about by some of my *confrères*. A more finished picture of myself appeared as "Hamlet" apostrophising the dead solicitor's skull, with the words added, "Alas, poor Yorick!"

Lockwood himself was "a fellow of infinite jest," full of fun and frolic. His merits as an advocate were far above the average. A jury was always influenced by what I may call his attractiveness—and to attract people goes a long way to gaining their suffrages. He no doubt found that out on the hustings. He was almost invariably good-humoured, but could be severe, though severity was not natural to him. He possessed a fund of common sense and tact.

In the House he was not brilliant, and his appointment as Solicitor-General was very likely the worst thing that could have happened to him. His party was in for so short a time that there was not much money to be made by it, and when he came back he found that Carson had been filling his place. It was very sad that this good fellow, who was so much beloved, died so young. He was only fifty-two. I think Lawson Walton died even younger. He also was a delightful man, and his circuit keeps his memory green. It shows that men at the Bar who come to the front and go into the House must have giant constitutions. One of the last occasions when I met Lockwood we walked together down St. James's Street and chatted about old times. He was debonair as ever, tall, erect, the very picture of a Yorkshire squire. Not long afterwards he seemed to collapse, and soon to all who knew him he was only a memory.

CRIMINAL MEN

I never considered myself a member of the Criminal Bar. I never accepted "soup," as the court briefs, which are distributed *pro rata*, are called. I never went "Sessions," but occasionally something which was the outcome of a case at Nisi Prius took me to the Old Bailey.

In 1874 there still existed a species of oratory which was familiarly known as "Old Bailey," and a few barristers were left who still considered that juries were to be caught by power of lung, and not by weight of reason. If a man could rant well, he was sure to get patronage. The thieves liked a man who would *speak up* for them. It seemed to me that many a man was saved by dint of shouting. I was once at the Middlesex Sessions, and my speech to the jury, in a minor key, was interrupted by what appeared to be a terrible disturbance. Had the Italians from Saffron Hill, who were frequently up for cutting and wounding, risen *en masse* and besieged the Sessions House?

Sir Peter Edlin, the presiding judge, sent the usher to ascertain the cause of the uproar. After a few anxious moments the usher returned with the news that "*it was only Mr. Warner Sleight addressing the jury.*"

When I made my first appearance at the Central Criminal Court I was much struck by the appearance of a barrister who seemed to me of most ferocious aspect. He literally rushed into court, his wig, a very soiled one, awry on his head, his gown, a very old one, half down his back. He said a few words to the judge in the most furious manner, and instead of getting reproof, as he seemed to deserve, got a courteous "Be it so!" Interested, I asked a young fellow who this was. "Why," answered he, "don't you know?—that's dear old Monty!" And so it was.

MONTAGU WILLIAMS was one of the best and kindest-hearted men of his century. Certainly he was not a beauty; an imperfection of the upper lip somewhat disfigured the face. Even when he prosecuted Madame Rachel he got no beauty hints from her. What style of character he played

when on the stage he does not state in his charming *Leaves of a Life*, but I should think not of the "Romeo" *genre*. He had been brought up in the true Old Bailey Bellows school, and the strain he put on his unfortunate voice was tremendous. How it did not break down earlier was a marvel; but when it did he had to have a terrible operation performed. His life was saved, but his voice—his capital and stock-in-trade—was gone.

Monty was essentially a criminal barrister, and seldom wandered from his own courts. I doubt whether he would have succeeded at Nisi Prius. Whether he ever thought of trying his luck in the serener atmosphere of Westminster I know not, but on the occasion of my asking him for his autograph for a child of mine, he wrote me this laconic letter:

"CENTRAL CRIMINAL COURT, LONDON.

"DEAR CRISPE,—This is not my *permanent* address.

"Yours sincerely,

"MONTAGU WILLIAMS"

There was one man, a man of great ability, who was his Court aversion. He tried to trample on him, to grind him under his feet—the other man retaliated by attempting to strangle him and scalp him—of his wig. There was a continual feud between them. Day after day, week after week, they were always in conflict. It was a weird strife in which they were engaged. They were never in accord, but the other man was frequently the victor; he was always on the side of virtue, Monty on the side of vice.

DOUGLAS STRAIGHT [Sir Douglas Straight] was the other man. The language they used to each other was simply appalling, and yet when they emerged from the stony walls of justice, where the goddess sat with scales and unsheathed sword, they might have been seen walking down Fleet Street, linked arm in arm, no longer gladiators in the arena of blood and thunder, but veritable "Damon and Pythias."

The affection between these two men was remarkable, and it must have been a sad wrench to Montagu when Douglas

left the country of his birth to take up his appointment to an Indian judgeship. The rule which I have set before me in this book, never to comment on the men who are still with us, I must not break, save that I cannot help saying that whether in the House of Crimes or House of Commons—the land of India or the land of Letters, Douglas Straight gained all that he so richly deserved—Success.

Montagu Williams, during the period he was at the Bar, did not take silk; but after his breakdown, when the loss of his voice put an end to his practice and a magistracy was given him, he got his promotion—a graceful act on the part of the Lord Chancellor who bestowed it. We all know how well he fulfilled his duties in his new sphere, and how he became the poor man's friend and devoted the few years which were left to him to works of charity and philanthropy.

WARNER SLEIGH, whom I knew very well, is spoken of by Montagu in his *Further Leaves of a Life*. He took first place in the bellows department. Before I was called I had the run of his chambers, at No. 2, Middle Temple Lane, which originally had been occupied by his father, Serjeant Sleigh. After my call I became his tenant, and as tenant of the Inn I occupied the rooms for over thirty-five years; the building is one of the oldest in the Inn, probably erected before the time of Elizabeth, who danced a minuet with the saltatory Chancellor, Sir Christopher Hatton, in our grand hall. In my room the walls were panelled, and one of the panels was, in fact, a concealed door, opening into a recess, from which by another door there was egress to the passage of the next house—a possible means of escape in times of capture.

No. 2 had the unenviable notoriety of being occupied by "thieves' counsel." Luckily, my chambers were on the ground floor, but the staircase was worn like a treadmill by the steps of ascending depredators. No etiquette or delicacy was observed by such counsel as to receiving instructions in person. As to this a story was vouched to me by the man of whom it was told. He was one of the "Old

Bailey" men who were so instructed. One day, following a rap at his door, a thickset man, with a cropped poll of unmistakably Newgate cut, slunk into the room, when the following colloquy took place:—

"Morning, sir," said the man, touching his forelock.

"Morning," said the counsel. "What do you want?"

"Well, sir, I'm sorry to say, sir, our little Ben, sir, has 'ad a misfortin. Fust offence, sir; only a wipe."

"Well, well!" interrupted the counsel. "Get on——"

"So, sir, we thought as you've 'ad all the family business, we'd like you to defend him, sir."

"All right," said counsel, "see my clerk——"

"Yes, sir," continued the thief; "but I thought I'd like to make sure you'd attend yourself, sir. We're anxious, 'cos it's little Ben, sir, our youngest kid."

"Oh! that will be all right! Give Simmons the fee."

"Well, sir," continued the man, shifting about uncomfortably, "I was going to arst you, sir, to take a little less. You see, sir"—wheedlingly—"it's little Ben—his first misfortin——"

"No, no!" said the counsel impatiently. "Clear out!"

"But, sir, you've had all our business. Well, sir, if you won't, you won't, so I'll pay you now, sir." And as he doled out the guineas, "I may as well tell you, sir, you wouldn't 'a' got the couters if *I hadn't had a little bit of luck on the way.*"

Young Sleigh was a very extravagant dog, and what he earned was spent lavishly and immediately. His purse was always open to his boon companions when there was anything in it.

Montagu Williams writes that this rapid young man before his death, which occurred when he was only about thirty-five years of age, had been married thrice: had divorced his first wife, been divorced by his second, and been twice bankrupt, and just before his death his third wife was divorcing him. During the proceedings he took a sea voyage and died on board ship.

He was an erratic genius—very brilliant and a really fine speaker, an excellent elocutionist, and he occasionally gave

Shakespearian readings. His second wife was the daughter of Bignell, the Argyle Rooms man, who paid his debts. Had he had ballast he might have taken a good place at the Bar. He must have been a thorn to his father, who was a very sensitive man.

Of Serjeant Sleigh I knew but little—his style must have been florid if the following can be depended on.

One day he was prosecuting in a libel case at the Old Bailey, and addressing the jury said :

“Gentlemen, my client is a *che-e-se-monger*, and the reputation of a *che-e-se-monger* in the City of London is like the bloom on a peach—*touch it, and it is gone for ever.*”

A story told of Platt, who became Baron Platt, pairs with this. He had a facial resemblance to Liston, the low comedian, and was sometimes high-flown in his addresses to juries. As a climax to his speech in a breach of promise case, he said: “And, gentlemen, this serpent in human shape stole the heart of my virgin client *while she was returning from Confirmation.*”

SERJEANT ADAMS, who was assistant criminal judge at the Sessions (before my time), had a very pleasant wit and knew how to deal with any counsel who took to *high-falutin*. On one occasion, after an altercation with the judge, the counsel for a prisoner in his address to the jury reminded them that “They were the great palladium of British liberty—that it was *their* province to deal with the facts—the *judge* with the law—that they formed one of the great institutions of their country, and that they came in with William the Conqueror.”

Adams, at the end of his summing-up, said :

“Gentlemen, you will want to retire to consider your verdict, and as it seems you came in with the Conqueror, *you can now go out with the Beadle.*”

CHAPTER XVI

CRIMINAL LUNATICS

AS in the last chapter I have referred to the criminal courts, and in the previous one to criminal lunatics, I propose to devote a short chapter to the consideration of a subject which cannot fail to be of public interest.

In Chapter XIV. I have alluded to the case of a murderer who was hanged, but who was, in my mind, mad.

The question as to whether criminal lunatics should be executed deserves consideration. On this there has been, and always must be, a difference of opinion, especially at a time when so many persons advocate the abolition of capital punishment. The question is a vexed one, and in the past some attempts have been made to answer it.

To consider it, we must start with the legal maxim, that the object of punishment is not to scourge the offender but to deter others from committing the same offence. The boy, however, who is whipped by order of the magistrate, probably does not recognise how much good he is doing other boys.

"Prisoner," said a judge, "you are not going to be hanged for sheep-stealing, but to warn others not to steal sheep."

The scapegoat who was whipped when the boy prince offended, possibly did good, as the prince did not like to see another chastised for his offence, and hesitated before he gave cause for further castigation.

We should all like to be whipped by proxy. Whether punishment is deterrent is much to be doubted—in a general

sense more than doubtful—in petty crimes possibly ; but the burglar, the common thief, the embezzler, the coiner, is merely plying his trade and cheerfully takes his risk. The example of the lash may deter men from beating and clogging their wives ; but we live in squeamish times, corporal punishment seems out of favour and the Board-school master canes at his peril—so hooligans are turned out. But these arguments apply to sane men.

Should the man of unsound mind who has slain his fellow-man be hanged or put away with all the comforts of a home, with enjoyments, amusements, and possibly luxuries he never previously enjoyed ? I do not refer to raving maniacs. Take a case such as that of Prince, who murdered poor William Terriss. Prince was a man, certainly, who knew the difference between right and wrong. The crime he committed was not one of impulse—homicidal mania—a desire to kill. It was premeditated ; he took time. He had to buy the weapon with which he committed the crime ; he tracked out and sought his victim ; he slew him deliberately ; he was influenced by one great motive—*revenge* ; his intention was to commit a cold-blooded murder. And this man is having a good time at Broadmoor, and probably has not the least compunction for his heinous offence.

It has been assumed that sane men never commit crimes without apparent motive, and that insane men never have a motive except of an illusory nature. This must be qualified by the fact that the Law acts on the humane principle that the existence of motive is no *proof* of guilt. In Prince's case there was clear evidence of intention to kill, and of motive—some grievance, real or imaginary. Revenge!—the most powerful of motives. I fear many juries give comfortable verdicts because they are timid, and do not like the idea of sending a man to his death, but frequently in such cases they are not properly directed by the judge. In the case I referred to, *Reg. v. Marks*, where the motive was the same, and the man known as “Mad Marks,” conviction followed because the jury were properly directed by Baron Pollock.

In 1843 an inquiry was directed, arising out of the murder

of Mr. Drummond in Parliament Street by McNaughten, a Scotchman, who had slain him in mistake for Sir Robert Peel, against whom he had some fancied grievance. He was defended by Sir William Follett, who submitted to a verdict of guilty on the ground of insanity. There was a public outcry, and the popular feeling was that the man should have been hanged, whether mad or not. The outcome of this was an inquiry in the House of Lords, at which Her Majesty's judges gave their views. Very little came of it, but the opinion of the judges was expressed as follows:—

"Inter alia. That the only ground upon which an alleged lunatic is entitled to an acquittal is—that he did not know the difference between right and wrong in the act that he then committed.

"That although a person may in a particular matter be under an insane delusion, and act in consequence thereof, he is equally liable with a person of sane mind.

"Before a plea of insanity should be allowed, undoubted evidence ought to be adduced that the accused was of diseased mind, and that at the time he committed the act he was not conscious of right or wrong.

"That every person was supposed to know what the law was, and that therefore nothing could justify a wrong act except it was clearly proved that the person did not know right from wrong. If that was not proved, the accused was liable to punishment.

"If the delusion under which a person laboured were only partial, the party accused was equally liable with a person of sane mind."

Those of my readers who may desire further information can refer to the Report "B. and F. M.R. 1843," as an analysis of these propositions is not within the compass of my book.

We happily live in humane times; to us it seems almost impossible to believe that our ancestors were so brutal. Mr. Havelock Ellis, in his excellent book, *The Criminal*, states "that a writer in Queen Elizabeth's reign says that in Henry VIII.'s time 72,000 thieves and vagabonds were hanged," but that statement is set down on hearsay evidence. About a

century ago (1790) more criminals, it is said, were put to death in England than in any other part of Europe—there was wholesale hanging of men, women, and children for theft. But—we may strain our mercy.

As to whether the criminal lunatic should be hanged or not, the opinion of Baron Bramwell may be cited as a rider to that of the judges in *McNaughten's* case. He gave it in *Dove's* case in the question: "Could he help it? Could he help it?"

This should always be the question where insanity is pleaded. If the man could not help killing his fellow-man, it would be brutal to hang him; but where he could help it, it seems doubtful mercy in the interest of the community at large to give him the run of a pleasant asylum during His Majesty's pleasure.

The matter is a very grave one, worthy of the consideration of thinking minds, of which there is no lack.

CHAPTER XVII

THE COURT OF LIES

THE value of an oath is not nowadays of much account. A man swears that he will tell the truth, the whole truth, and nothing but the truth—and he calls upon God to help him ; with what result we frequently know. Such an appeal seems quite unnecessary from the witness who is a witness of truth—he will tell the truth, whether he is sworn or not.

Mr. Justice Byles said that “A man’s word in the City of London is as good as his bond, but,” he added quaintly, “you cannot stamp it.” To my mind a man is as likely to tell the truth without kissing an unsavoury Testament, holding up his hand in affirmation, going through the Quaker’s formula, or crashing a teacup, as the Chinese do.

It is said that some persons are born liars. I don’t know ; I fancy some are ! I have known a few who have justified the promise of their youth. But the law is paramount in its insistence on an oath.

“My Lord,” said a witness to Mr. Justice Maule, “you may believe me or not, but I have stated not a word that is false, for I have been wedded to truth from my infancy.”

“Yes, sir,” said the judge drily, “but the question is, how long have you been a widower ?”

The only contention which can be urged in favour of taking the oath is that, once taken, the witness falls within the purview of the criminal law—he can be indicted for perjury. A man—of course, I include women in these observations, without an interpretation clause—may lie to his

heart's content, slander his neighbour, and his neighbour's wife, remove his neighbour's landmark, and yet have no fear of the punishment which attends the perjurer, who may get time for his pains. True, he may have an action brought against him for slander, in which he may be mulcted in damages, or even have to run the racket of a prosecution, in which a fine will purge him.

The oath is administered too indiscriminately, and without caution, with one exception—to the young child. If of tender years, it is the duty of the judge to examine the proposed witness on the *voir dire*. The law desires to protect the infant from the perils of Limbo, or Hades, or whatever you may call it, and the punishment which in those mysterious shades may follow lying.

Mr. Justice Maule had his own views on the subject. The story is old but worth preserving. On one occasion he examined a little girl as to her understanding the nature of an oath, and her belief in a future state.

"Do you know what an oath is, my child?" said the judge, in kindly fashion.

"Yes, sir ; I am obliged to tell the truth."

"And if you always tell the truth, where will you go to when you die?"

"Up to heaven, sir."

"And what will become of you if you tell lies?"

"I shall go to the naughty place, sir!"

"Are you sure of that?"

"Yes, sir ; quite sure."

"Let her be sworn," said the judge, "*it is clear she knows a great deal more than I do.*"

So far from doing away with such examinations, I would extend them. A child's mind is put into a condition of awe by the questions of the grave gentleman in wig and sometimes scarlet robes ; he appears scarcely human. It is not as we see him ; it is as she sees him. In civil cases it is of little importance, save to the parties, whether the truth be told or not, but in criminal cases a child may be the arbiter of life or death. I was present at a case in point ;

it was at Chelmsford Assizes, Mr. Justice Mellor being the judge. The prisoner, a farm labourer, was charged with the murder of his young daughter, who had kept him waiting for his dinner in the fields; the only witness of the crime her little sister, who had accompanied her—a child of ten. The learned judge examined her in the usual way. The child was intelligent, knew her Catechism, and went to a Sunday school. She was sworn.

Suddenly a hoarse voice was heard from the dock :

“Speak the truth, Annie! Speak the truth!” And she did speak the truth, and on her evidence her father was found guilty, sentenced, and *hanged*.

Even when a child is not of tender years I think a caution from the judge would be often valuable. Naturally children are truthful, but the parents are sometimes not so, and the child is tutored to give evidence which is false. In a case in which I was counsel, the result almost depended on the evidence of a girl of fourteen or thereabouts—an intelligent, respectable-looking child. I commenced my examination in the usual way, by breaking up the evidence into questions. “Better let her tell her story in her own way, Mr. Crispe,” said the judge. And she did, and gave it apparently in the most truthful manner—she was a prepossessing child, and the jury were impressed. “I do not propose to cross-examine the witness,” said the counsel opposed to me, “but, Jane,” he continued, in a pleasant way, “tell it us all over again, that’s a good child!” And she began again from the beginning; she was absolutely letter perfect—there was not a word of variation—she had been coached.

This chapter was written before Judge Edge—whom I had the honour, as senior counsel present, of welcoming to the Bench—made his strong protest as to the perjury daily committed in his Court and also before Lord Gorell, in resigning the presidency of the Divorce Court, made his valedictory remarks as to the reforms necessary in that court, to which, oddly enough, I had devoted a part of this chapter and which I am now able to extend on revision. As a result of the trenchant remarks of Judge Edge, it is to be hoped that the

Legislature will take steps by which the courts may be purged of perjury, or, at all events, that the judges may have power to inflict summary punishment.

There can be no greater contempt of court than deceiving the judge and the jury thereby. Make perjury contempt of court, and it can be dealt with. Some County Court judges on country circuits do not appear to agree with Judge Edge, and are certainly not in accord with him as to the prevalence of this crime in their districts.

Naturally enough in the country, where many of the courts are in quite small towns, false swearing is less prominent, for the simple reason that in limited areas, where every one knows every one's business as well as his own, detection is easy. But in London there can be no doubt. His Honour Judge Bacon has often testified to the corruption in his courts, at Whitechapel especially. It may be safely said that there is sure to be perjury on one side or the other—sometimes on both.

Mr. Commissioner Kerr, who presided at the City of London Court, said in his dry, witty way :

“David said in his haste all men were liars ; if he were sitting in this court he would have said the same thing at his leisure.”

There is one court which may well be called “The Supreme Court of Lies,” the branch of a division devoted to matrimonial disputes. In every contested case, where there is allegation and denial of adultery, there must be perjury. In this court the ladies take high rank in mendacity. Women, some chivalrous people think, are naturally truthful ; possibly, until they are corrupted by men. I must admit that they tarradiddle better than the other sex—they do not seem to realise the enormity of the sin they commit or to fear the punishment which may follow, when they have thrown off this mortal coil.

In the court I refer to, in a *cause célèbre*, how beautifully, how confidently—sometimes tearfully—they lie ; how sweetly, mutely, they appeal with their eyes to judge and jury, and sometimes to the wicked counsel who is tearing their reputations to tatters ! Why should not these ladies be warned, as

little children are? When the Honourable Angelina, or Lady Betty, appears in the Divorce Court, let the President, or Mr. Justice Bargrave Deane, put them through their facings, as to their knowledge of the consequences of breaking their oath, as well as their marriage vows.

"What will become of you if you tell lies?" I wonder whether they do go to the "naughty place."

The crime of perjury is a creature of the oath, the punishment its offspring, but, especially in the Court I refer to, the witnesses know they may lie with impunity and that no proceedings will be taken against them. The object of punishment is to deter others from like offences. If then respondents, co-respondents, and others knew that the Public Prosecutor would be put in motion, or summary punishment be administered by the President, or in other courts by the presiding judge, for oath breaking, they might be deterred from this wholesale lying. "*If lying were a capital crime the hangman would work overtime.*"

It must not be gathered from these remarks that I desire to convey the idea that evidence in the courts generally is corrupt; so far from that, my view is that, as a rule, it is pure.

Ancillary to the question as to control of perjury in the Supreme Court of Lies, there is another of great public interest, viz., whether divorce should be made easier. A learned and distinguished judge, Sir Robert Phillimore, has given his views to the contrary. As Vacation judge some years since, and acting evidently *contre cœur*, it became his duty, in the absence of the judge of the Divorce Court, to annul unwelcome marriages.

"I have now," his Lordship said, "to pronounce decrees absolute in the cases of several persons who are anxious to annul their matrimonial ties, with the view of contracting others."

The law as it now stands makes simple infidelity on the wife's part a sufficient cause for the dissolution of marriage by the husband—but the adultery on the husband's part must be incestuous, to entitle the wife to succeed on that single ground. Added to infidelity, the wife must prove cruelty or desertion. To the lay mind it may seem an anomaly and an

injustice, that the husband can obtain his decree on proof of his wife's frailty, and the wife not on proof of her husband's. But a little consideration will show that the positions are different. Except from a moral point of view, the husband's offence hurts no one—save the wife, whereas the wife's act is one against the community ; the rights of property and heritage are affected—her adulterous issue may be reared as her husband's, and his lands, and, if he has rank, his title, pass to an illegitimate heir. But surely, where the offence is the same, although the consequential result is different, the same remedy should apply.

In my humble opinion the Marriage Laws require reform. I offer a few instances. I take the case of the wife whose husband has *not* been guilty of infidelity. She is treated by him with brutality, he beats her, wounds her through her children, insults her before her servants, he makes her home a hell—or he is habitually a drunkard, his language to her is vile, and, although he does not assault her, his threats terrify her, and she goes in fear of her life—or he becomes a criminal, has possibly a life sentence, and thus degrades his unfortunate wife—or he is pronounced a lunatic, homicidal, or in a lesser degree, and yet the wife can only get a decree *a mensâ et thoro*.

In any of these instances it seems a hardship that the wife should be kept to her contract "to have and to hold him." Then take the converse. A man's life is made miserable through his wife. She is a virago, and a slattern, she neglects her home, her children, and herself. When sober she is shrewish and abusive ; when drunk she is simply a brute. Surely the man in such case should have relief, although his wife has been faithful to him.

I could multiply instances, but have indicated enough to show that the present condition of affairs requires serious consideration, in the interest of the happiness of the people. The lower classes are shortly to be helped and matters made easier, and their existing rights in the police courts extended to dissolution of marriage ; if so, the perjury question will arise, as, in addition to the one Supreme Court, there will be a hundred "Courts of Lies"—there is no escape from it

In every contested case there must be wilful and corrupt perjury.

There is another reason which I shadow forth as a ground for dissolution, viz., ante-nuptial incontinence—where there has been *suppressio veri*.

In some of the American States ante-nuptial incontinence is of itself ground for a divorce; but the admission of it before marriage is, and properly so, a bar to relief. The difficulty, no doubt, is that where the man would have no compunction in admitting his bachelor *fredaines*, the woman would be influenced by shame to conceal her *faux pas*. Possibly if it were law, the great fear of being found out might have a salutary effect. It must be thirty years ago that I raised the point before Sir James Hannen, then President of the Divorce Court.

While writing these lines I read in the papers the announcement of the retirement of Sir Gorell Barnes [Lord Gorell], one of the most estimable of the distinguished men who have presided in the Court of Divorce. I note that his lordship has just given an address to the law students at Liverpool (February 5, 1909), in which, deprecating the difficulties of obtaining divorce, in the sense of dissolution of marriage, the learned judge said :—

“In Divorce Court procedure there was now in reality one law for the rich and another for the poor. By ‘rich’ he meant persons who had means to go up to London and try their cases there. He was satisfied that a very large proportion of the community in England could not do that, and that a remedy could only be provided by means which would bring the law to these poor people. That was a very big subject, which some day would meet with full discussion. There should be one guiding principle—that the same opportunity should be given to those who were poor as to those who were better off. He was not at liberty to say anything in detail about this matter, but it might mean the establishment of local tribunals. He referred to the publication of Divorce Court proceedings as a burning question with regard to one Court now, but if local tribunals

were established, it would become a much more burning question."

Truly, indeed, if the divorce cases are to be multiplied by the facilities evidently proposed to be given, there must be some control exercised as to the publication of details, otherwise the whole countryside will be demoralised, and the scandal which exists be magnified to an intolerable degree.

No doubt Lord Gorell will, in his leisure, and perhaps in another House, give the people the benefit of his great experience in an attempt to reform the marriage laws and purge the Divorce Court of some of its abuses.¹

Some years ago jurisdiction was given to the police courts in regard to divorce, but limited to judicial separation. Mr. Plowden, in his *Grain or Chaff*, advocates an extension to powers of dissolution. His desire may have a prophetic realisation.

The remarks made by Sir Gorell Barnes bring me back to my office of *raconteur*—the words "There is in reality one law for the rich and another for the poor," being possibly inspired by a story I gave of Mr. Justice Maule in my lecture on the "Wit and Oratory of Bench and Bar."

His Honour Judge Parry (who is not only a lawyer but also a dramatist), contributed, on February 13 (1909), to the *Daily Mail* a clever article on "Divorce and the Poor," and *apropos* of Sir Gorell Barnes' speech, gave a version of the same story, but I prefer my own, as I have given it for a third of a century.

JUSTICE MAULE, a distinguished judicial wit of the past, possessed a fine sense of irony, and often cast ridicule on the laws he administered. The marriage laws, as they then existed, were the subject of his biting sarcasm, and their reform in a measure due to him. At that period bigamy was rife throughout the land. Its frequency arose from the impossibility of poor people obtaining a dissolution of the marriage tie. In consequence, husband left wife and wife

¹ Since this was written Lord Gorell has had a temporary set back in the House referred to, which, however, is not likely to discourage him in his efforts as a reformer.

husband, and with new mates went through the marriage ceremony. The squire could get relief, the serf none. So the serf made his own law, and with a sense of honour which did him credit, married the woman who was to keep his house. He thus became amenable to the criminal law.

Justice Maule knew very well that the axiom "an Englishman's house is his castle" was a fallacy, and that "there existed the same law for poor as well as rich" was a fiction; and his raillery in the case referred to awakened the public sense to anomalies, which were to a great extent subsequently removed by statute.

In 1845 no one save of means could obtain a divorce. At Warwick Assizes in that year Maule tried the case of *Regina v. Hall*, the charge bigamy. The jury had no difficulty in finding the prisoner guilty but, before sentence, it was urged in mitigation that the man had been a good husband and father, that he was an honest, sober, and industrious man—whereas his wife was a shrew, a drunkard, and had left her home, taking her children with her, and had gone to live with another man. Nothing further remained save for the judge to do his duty, and vindicate the majesty of the law, which he did in this fashion, after some preliminary remark:—

"Prisoner at the bar, I will tell you what you ought to have done, under the circumstances of your case. You may say you did not know what to do, but let me inform you that the law conclusively presumes that you did. Instead of going to a parson, you should have gone to an attorney, to bring an action against the betrayer of your wife—for damages. That would have cost you £100. You were probably not worth as many pence; but that is what you should have done. Having proceeded thus far, you should have procured a proctor, and instituted a suit in the Ecclesiastical Courts for a divorce—*a mensâ et thoro*; that would have cost you £200 or £300 more. Then, when you had obtained a divorce *a mensâ et thoro*, you had only to procure a private Act of Parliament for a divorce *a vinculo matrimonii*. The Bill might possibly have been opposed in all its stages, in

both Houses of Parliament, and, altogether, that would have cost you £1,000. You will probably say you never had a tenth part of that sum. But, sitting here as an English judge, it is my duty to tell you that *this is NOT a country in which there is one law for the rich and another for the poor*. The sentence of the Court is that you be imprisoned for—one day."

As the prisoner had been in custody for a longer period he was at once discharged, no doubt a wiser man.

Accepting the dictum of Lord Gorell, the difficulties in the way of a poor man, or woman, obtaining a divorce still exist in this young century. The intention no doubt was, in the Marriage Act, that the cost should not stand in the way. Any one without money may, in fact, sue *in formâ pauperis*—have the services of the official or other solicitor gratis, and counsel allotted without an honorarium; but there are so many formalities to be gone through, before leave can be obtained, that but few avail themselves of the privilege.

Marriage will always present problems. Emerson says: "Is not marriage an open question, when it is alleged from the beginning of the world that such as are in the institution wish to get out and such as are out wish to get in?" paraphrasing Montaigne's lines: "It happens as with cages—the birds without despair to get in, and those within despair of getting out"; or, as Quitard puts it: "*Le mariage est comme une forteresse assiégée; ceux qui sont dehors, veulent y entrer, et ceux qui sont dedans, veulent en sortir.*"

It is pretty generally known that the first step to a divorce is to obtain a decree nisi, which after the lapse of six months is made absolute, unless the King's Proctor intervenes. This probationary period seems too long. The evidence has been given, and the petitioner has obtained the verdict of the jury or the judgment of the judge. *Ipso facto* everything has been done to entitle the parties to consider themselves free. But during the period the successful husband or wife, as the case may be, must remain continent, otherwise—intervention.

An amusing instance of too great haste in marrying again

came before my notice. In a case of E—— v. E—— and another—a husband's petition—I obtained a decree nisi for my client. Just before the six months was up my clients informed me that Mr. E—— proposed to marry again on the day the decree nisi was made absolute. I advised that to do so would be premature; there might even then be an appeal. The gentleman was warned not to be in a hurry. Nevertheless, having ascertained that the decrees absolute were to be pronounced on a certain day, he arranged for his marriage at one o'clock on that date. Now these decrees are, as a rule, dealt with at the sitting of the court; they are taken as matters of course, run through rapidly, and the whole list disposed of in ten minutes. Before 1.30 Mr. E—— was once again a married man. After the mid-day adjournment a clerk to the solicitors happened to go into the court and heard the Registrar *then* reading out the decree absolute list, which for some reason had not been taken at the morning sitting. When the Registrar read the case of "E—— v. E—— and another," a counsel got up in court and said, "*In this case I intervene on behalf of the Queen's Proctor!*"

The sad news was at once wired, with some strong advice. Instead of the health of bride and bridegroom being proposed at the wedding breakfast, the guests had to condole with two interesting young bigamists. The intervention had been obtained on affidavits of the divorced wife, who, inspired by anger and revenge, made allegations of impropriety between her husband and the lady she had heard he was to marry. Happily, on inquiry, the Queen's Proctor found out there was no foundation for her statements, the intervention was withdrawn, and the decree absolute duly pronounced.

CHAPTER XVIII

CURIOUS CASES TRIED

I WAS counsel in an action, tried on Assizes, in which, on the part of the plaintiff, there was a most remarkable instance of alleged malingering—*Martin v. Molby & Co.*¹ Mr. Willoughby and myself were for the plaintiff, and Mr. William Willis (now Judge) for the defendants. The plaintiff claimed damages for injuries sustained while on the defendants' premises. He was working as a carpenter under a derrick, and a balk of timber fell and struck him on the shoulder. He was severely injured, the negligence was clear, and there was no evidence of contributory negligence.

The question was whether the amount paid into court by the defendants was enough. The man was earning thirty shillings a week, and £300 would have apparently fairly compensated him. This, however, did not satisfy our clients, whom I subsequently found out were a shady lot. My brief told me that the condition of Martin was simply terrible: he was completely shattered in health; his head was misplaced, and he would never be able to hold it upright again; and, sad to say, the poor fellow was otherwise grievously injured. After the accident he was taken to a hospital, and there, as usual, received the kindest attention from the doctors and nurses.

The case was interesting. When they had pulled him through all danger his neck had become awry, the head resting on his left shoulder. As the misplacement did not yield to ordinary treatment, the doctors became sus-

¹ The cases do not appear in the law reports under these titles.

picious, and arrived at the conclusion that the man was shamming—in fact, that it was a case of malingering. What was most remarkable was that even in sleep the head remained in the same position—possibly the neck had stiffened. The doctors could lift the head, but it fell back again. At last, in order to ascertain beyond doubt the genuineness of the condition, it was suggested that a slight operation should be performed under chloroform, as under the influence of an anæsthetic the man could not feign. To this Martin objected.

At the trial it was my duty, as junior, to examine the plaintiff in chief, and after Willoughby had opened the case I called him. The scene was almost painful. The solicitor, with a grave countenance, made way for his client through the crowd to the witness-box. Feebly the plaintiff ascended the steps and took his place; he was permitted to sit. His appearance was most pathetic; a fine young fellow in the prime of life, pallid, stricken, and his head resting on his shoulder. It looked like £500. I commenced my examination in a tone fitting the occasion, and the answers came in a soft, bell-like voice, very low and sweet, but quite distinct; he told his story in a manner inexpressibly sad. The jury looked pensive and touched.

Willis, an admirable cross-examiner, could make nothing of him. The witness was as good as in "chief"; he always answered very civilly and gently when pressed. And when the inevitable question came, "Why did you refuse to have an operation performed under chloroform?" the answer was, "I was told by my friends that it might kill me, and I did not wish to lose my life."—Mr. Willis called some of the most eminent men in London to show that the man was shamming, and then made a vigorous address to the jury, but with no effect, and he got no help from the judge. Verdict for plaintiff; damages £1,000. I shall never forget poor Willis on our journey to London that night; he was furious, tried the whole case over again, as was his wont, and pronounced anathemas on plaintiff, judge, and jury.

Our triumph was short-lived. An order for a new trial was obtained on the affidavit of a clerk to the defendants'

solicitors, that he had seen the plaintiff, a few days after the trial, walking in the Mile End Road *with his head perfectly erect*.

The Court, however, made it a condition, as the man's means were exhausted, that the defendants should pay him £200, which was accordingly done. Armed with these new sinews of war, Martin's solicitor thought he would strengthen the case, and retained Serjeant Parry for the new trial. Now if a man could move a jury, and inspire them with sympathy, Parry was, *par excellence*, the man. His manly presence, and frank and open style were just the thing—the selection could not have been better. The case came on again at the next Assizes, and in due course Willoughby and I met the Serjeant in consultation at his lodgings. Our client was very fearful as to not getting such large damages, and suggested to the Leader that in his opening he might mention the amount previously obtained. "How dare you make such a suggestion?" said the indignant counsel, his forehead moving up and down, and his eyebrows nearly reaching his hair. "If you repeat it I will throw up my brief."

In the main Parry was content with the case; the only new feature was the allegation in the affidavit; this was to be met by mere denial and the evidence of a new medical witness, who was to swear the man's condition was unaltered. I believe he would have sworn anything.

On leaving the lodgings our client said, "Pity Serjeant Parry won't mention the damages!" "It would be highly improper of him to do so," said Willoughby. "*Well, we must make the best of it,*" returned the solicitor, with a look which meant mischief.

Serjeant Parry opened the case impressively, and in admirable style. In the course of his opening, it was noticeable, that a man, standing near the counsel, had his head forward leaning towards Parry, and with a broad grin upon his face, as if he were jeering at what was being said. After a time this seemed to worry Parry, who told him to behave himself and to act with less levity. The man drew back a little with a grin, but still continued to grin. This exasperated the Serjeant,

who insisted that the man should be removed, so the man went to the back of the court, grinning. This odd interlude did us great service. When for the defence the solicitor's clerk was called, to give the damning evidence of the wonderful recovery, it was found that he was the grinning man—he entered the box grinning, he took the oath with a grin, he respectfully saluted the judge and jury with a grin, and gave his evidence grinning. When he had finished it, the Serjeant refused to cross-examine. "You may leave the box, sir," and the witness did—*with a grin*. As a fact, the witness was a most respectable man, but suffered from a facial contortion which excitement provoked.

Returning to the case, I had again to examine the plaintiff—the same sad man—the same sad story, amplified by his six months' further suffering since the trial, of which he made the most, and his absolute denial of the allegation made by the clerk. As during the six months he had been out of employment—an element of further damage—I had, in my right, to draw his attention to the previous trial. I said, "You remember the occasion of the last trial?" "Yes, sir," he answered, in a low, clear voice, "*when the jury gave me a thousand pounds.*" It was out! I thought it would be. In the end verdict for plaintiff; damages £1,050. Martin had well earned the odd fifty.

Well, within twelve months afterwards I was at Bow County Court and heard a case called on—Martin against somebody. I looked up and saw my quondam client. He appeared remarkably well, was respectably dressed, and his head was perfectly perpendicular. He came up to me when I was leaving the court and I said, "Why, Martin, this is a miracle!" "Yes, sir," he answered, with a twinkle in his eyes, "*the damages had a wonderful effect.* Goodbye, sir, and I thank you."

I offer no opinion as to whether this was a case of malingering. Martin certainly obtained the verdict of two juries. In regard to the salutary effect of damages, I have seen many instances, especially with women. The anxieties as to a trial, the fears as to result, and the ordeal to be faced in the witness-

box, often retard recovery. The strain passes away with favourable verdict, and the renewal of health is rapid.

MARRIED IN HASTE

I was counsel in a very interesting case, in which both husband and wife had been innocently guilty of bigamy—*Baines v. Baines*, a wife's petition for a dissolution of her marriage, on the ground of her husband's adultery and desertion. The circumstances were dramatic and romantic. The case was tried before Sir Gorell Barnes.

In 1877 Miss Maxwell, a young lady of some personal charm, was living with her people at their country house. Beyond beauty, she was highly accomplished, having finished her education in Paris. Her father was a rich shipowner; at home she moved in smart society, and many of her then girl friends are now women of rank. She had everything to make life enjoyable—her own hack, carriages, and, above all, she was her father's heiress. She had been religiously trained, and it was her habit to take a class at a Sunday school.

At that period she was a mere girl, utterly inexperienced but certainly romantic. Most unfortunately, at the Church House she met Mr. Henry Walter Baines, a quite well-connected young fellow, the son of a country solicitor, who practised in a neighbouring town. He, at the school, conducted a class for boys. He was only a few years her senior and still a minor. The boy and girl fell in love with each other, but young Baines was scarcely an aspirant whom the wealthy shipowner would be likely to encourage as a suitor for his daughter's hand and fortune. Baines therefore suggested a clandestine marriage, and the girl consented. He went to London and procured a special license, to obtain which he had to make statements which were false if not fraudulent. He arranged for the ceremony to take place at some distant church, and, armed with the license, one very early morning they were married.

When they left the church Mr. Baines confessed the means by which he had obtained the certificate—having

alleged the consent of their parents, and that they were both of age. The girl, about sixteen then, was alarmed, her sense of truth and decorum shocked. The result, they parted at the church door, and the marriage was never consummated. They met a few times afterwards, when she treated him as a stranger—a position which probably his fears induced him to accept. After a few months Mr. Baines went to India, and there remained.

The girl came to the not unintelligent conclusion that the marriage, which was merely one in name, was no marriage at all, and she kept the, to her, terrible secret. Time went on, and after a few years a Mr. John Alexander Smith appeared upon the scene, a fairly prosperous City man; he was received at her father's house, and, influenced by her beauty, to which her great expectations added lustre, made her an offer of marriage, which, with the approval of the parents, she accepted. The engagement was made public in the usual way. But conscience began to prick, and when the time approached for fixing the nuptials, Mrs. Baines, as she really was, made a clean breast of it to her *fiancé*.

He was naturally incensed. What was to be done? It looked as if he were going to lose the prize—he had some hazy hope, however, that the difficulty might be got over. Prior to disclosing the secret to her father, the idea of which filled Mrs. Baines with dread, it was arranged that a certain shrewd aunt of the lady should be consulted. The tale was told, and the aunt came at once to the rescue. She had seen in the *Morning Post* an advertisement in which a gentleman offered his services in the arrangement of all “Matrimonial difficulties.” His name was Edwin James, and his address Bond Street.

This brings upon the scene a remarkable and notorious man. In his day, Edwin James, a then member of the Bar, appeared to be making his way to the Bench—a thorough lawyer, a brilliant advocate, with a fine presence, not without dignity, the prizes of his profession seemed to be within his grasp. I remember him well as Recorder of Brighton. All he wanted was balance—but he rolled down

hill much quicker than he climbed up. Eventually he was disbarred for some nefarious transaction, in which he had victimised a young Earl of Yarborough, and possibly for other offences. After his disgrace he went to America, practised law in some form or another, but was not sharp enough to capture the cute Yankees ; he returned to London, and in his new capacity of "Matrimonial Adviser" Mrs. Baines became one of his first clients.

The position was duly placed before him, and on payment of a retaining fee of thirty guineas, he gave his opinion that the marriage was not void, but voidable. He further advised that a suit should be at once instituted, to set aside the marriage ; this would, of course, require more money, and funds were forthcoming.

James instructed some solicitors to put a petition on the file, which they did, and beyond that, as far as I was able to ascertain, nothing further whatever was done. The Registrar refused to issue a citation, on the simple ground, so I was informed, that the girl-wife being still under age, could not proceed—that it was necessary that her father as next friend should be on the record. As to this there could be no difficulty—it was simply a question of amendment. When the matter came before me many years afterwards I came to the conclusion that the father never was informed of the secret marriage. In the months that rolled on, James reported that all was going well, but that the proceedings were expensive, and money was the cry. At last, to the delight of Mrs. Baines, news was communicated by wire that a decree had been obtained. *Mirabile dictū*. It seems incredible, that any sane persons could have believed that a decree *had been* obtained without citing Baines—without evidence—and—without a hearing.

The shipowner was a man of experience—Smith a business man. Further, the latter had instructed a friend of his, a solicitor, to watch the proceedings initiated by Edwin James. The solicitor must have known they were farcical. But the would-be husband had done more ; he had actually taken the opinion of Mr. Bayford, K.C., as to the validity of

the marriage, and Mr. Bayford had given his written view that the marriage was *not* void, but probably voidable on the ground of fraud. Not satisfied, Smith took the independent opinion of that eminent and lamented counsel, Mr. Inderwick, K.C., with, of course, the same result.

On receipt of the telegram Mrs. Baines showed it to Mr. Smith. The poor child-wife honestly believed that she was free—he could scarcely have so believed, but he determined to take his chance. Mr. Smith, in giving evidence at the trial, stated “that he believed the ‘opinion’ was that of Sir Henry James; that in regard to the opinions of Mr. Inderwick and Mr. Bayford, he took them for what they were worth—and believed them to be correct, but did not inform the lady’s father that her marriage could not be set aside—he was satisfied with the lady’s statements.” I quote from the *Times* report.

In a few weeks the marriage took place. His solicitor, it is said, warned him, but gave countenance by attending at the wedding. It was no hole-and-corner affair; there were numerous and influential guests, whose names, with their presents, were chronicled by the local press. Six months had not even elapsed for making the supposed decree absolute.

Mrs. Baines knew nothing about divorce procedure. Her people were so strict that she was not permitted to read the newspapers, for fear her mind might be corrupted by nauseous reports. The poor woman had been treated abominably. However, the mischief was done, and the parties lived together as man and wife for several years, and children were born of the union.

We must now follow Mr. Baines. He seems to have been an intelligent man of business capacity, and was soon making a position in India. In due course he heard of the bogus decree. He may have thought it odd that he had not been cited to appear; it was very much like getting judgment on a writ that had never been served. He then heard of the marriage. Surely he must be free—let us hope he thought so. At all events he shortly afterwards made use of his presumed

liberty by marrying a lady of good position in one of the Presidencies. They, in due course, had children. This was indeed imbroglio. Smith had married another man's wife, one man had committed bigamy and one woman, and there were two sets of illegitimates. It was a case of topsyturvydom. But it did not end there.

Some ten years after the second marriage of his daughter Mr. Maxwell, the shipowner, while giving evidence as a nautical expert in the Admiralty Court, dropped down dead. When conducting the Baines case I referred to this incident. Sir Gorell Barnes then informed me that the sad event had taken place in his presence, his lordship having been the presiding judge. Mr. and Mrs. Smith had waited for nearly sixteen years to reap the harvest—they found a field of tares. The poor gentleman had died hopelessly insolvent. Conscience now apparently pricked Mr. Smith. It came home to him *quite suddenly* that possibly he had been living immorally for many years with another man's wife. True, she had devoted her life to him ; she was the mother of his children—the poor children who were illegitimate—but such harrowing details must be swept aside in the cause of honesty and justice ! To continue a life of immorality was more than he could bear ; but it was not for him to determine, it was for Sir Francis Jeune—so he humbly petitioned the President that his lordship would be pleased to decide the knotty point and nullify the marriage.

The case was heard, and without any difficulty Mr. Smith obtained a decree. The poor lady was by this untoward fate once more Mrs. Baines ; she had wasted the best years of her young life, and she was compelled to take proceedings against Mr. Baines for a dissolution of their marriage on the ground of adultery and desertion.

The case, which lasted four days, came on before Sir Gorell Barnes, who heard it with great care and patience. I appeared for Mrs. Baines, my friend Mr. Barnard, now K.C. and practically leader of the court, for the respondent. The great difficulty was the fact that the lady was in *pari delictu* ; perfectly innocently she had by misadventure com-

mitted adultery, and had entered into a bigamous contract. The simple question was, did she honestly believe at the time she went through the form of marriage with Smith that her marriage with Baines was at an end? The learned judge, after hearing her evidence, and taking time to consider, came to the conclusion that she did. A decree nisi was pronounced, and after some slight trouble with the Queen's Proctor, it was in due course made absolute. Baines had to re-marry his second wife, and is waiting the happy day—which will come—when children born before marriage may "*per subsequens matrimonium*" be legitimatised as in Scotland, France and Holland.

In this remarkable story, which I have condensed to scanty limits, I offer a "scenario" of which some young writer of fiction may avail himself.

THE MOHAMMEDAN WIFE

An Indian romance might well be weaved out of the materials I now offer, in the history of Mr. Lamartine, and the litigation in which I acted as counsel for him.

Mr. Lamartine, an English gentleman of good family, was formerly a Civil servant of the Crown in Ceylon. His position was one of trust, and brought him into communication with the tribesmen. All the land had originally been the property of the natives, and from the time when Ceylon became one of our Indian jewels, up to the period of Mr. Lamartine's appointment, feuds had continued, and not without bloodshed, through the Cingalese trying to keep what they believed to be their own. They were oppressed and hardly treated. They found a champion in good-hearted Lamartine, who had investigated their grievances. The archives of Ceylon were open to him, and he came to the conclusion that their grievances were not imaginary. With the view of himself having the right to maintain claims against the Government, he purchased large tracts of land, at nominal prices, from the natives whose titles were open to dispute. There were soon agrarian disturbances, and

Lamartine not only lost money, but also blood in the cause of his dark friends. On one occasion he was nearly killed. Save that he was fined more than once, nothing was done, and he was not recalled.

In 1883 Lamartine married a French lady with £5,000, which under French law remained her property. This may be passed for the moment.

Time went on, and unfortunately Lamartine had reason to doubt his wife's fidelity. He therefore took proceedings in the Court of Ceylon, and obtained a decree dissolving the marriage. That made him happy, as he had fallen desperately in love with a very charming girl.

I do not propose to give that lady's name. I have always felt the greatest sympathy for her, and there is no reason to pain her or her family. Suffice it that she was the daughter of a most eminent man in India. Then came a great blow—the decision of the Cingalese Court was reversed in the Privy Council, on the ground that the court had no jurisdiction.

That created a perplexing state of things. The young and ardent lovers were crossed by cruel fate ; but love rides over all difficulties. Of course the young lady should have said goodbye ; but she was very fond of Lamartine, and it was probably her feminine resourcefulness which found a solution to the difficulty.

Our laws permit a man to have only one wife—at present ; probably that is quite enough, but some other countries are not so parsimonious. So Lamartine said, "I will become a Mohammedan, and you, love, shall also become a Mohammedan, and then I can have four wives, and you shall be one of them !" Presto ! Mad though the scheme seemed, it was acted on with promptitude. Wild were the rejoicings in Ceylon ; the country from one end to the other was in a state of agitation. The "friend of the people" was now to be one of the faithful. In due course the lovers were received into the Mohammedan faith with great pomp and ceremony ; and that done, these two were made one in Oriental fashion. Then came sacks of jewels—not large ones—but rubies,

topaz, and amethysts galore, and soon, alas! there was need for them.

The wicked British Government immediately deprived Lamartine of his appointment. He had made a muddle and by his Mohammedan marriage had thrown away his chance of getting rid of Mrs. Lamartine No. 1, and, further, given her the opportunity of obtaining a judicial separation, which she forthwith procured—with the right to demand back the fortune she had brought him. Mrs. Lamartine proceeded in the Chancery Division, and after a prolonged hearing before Mr. Justice Kekewich, judgment was entered in the lady's favour, in accordance with his lordship's declaration, for the payment of the sum claimed, £5,371 10s., some interest, and costs.

Lamartine appealed, but without success, and, disgusted with his law experiences, he entered himself as a student at one of the Inns, passed his exams, and was duly called to the Bar, and is probably doing well in India. It is to be hoped, however, that he has no intention of availing himself of his still unexhausted Mohammedan privilege.

CHAPTER XIX

"THE COUNTRY GIRL" AND THE DRUCE CASE

AN interesting professional case, known as *The Country Girl*, was tried before the Lord Chief Justice and a special jury—Augustus Moore *v.* George Edwardes. I appeared for the plaintiff, instructed by Messrs. Beyfus and Beyfus, and Mr. Gill, K.C., instructed by Messrs. Slark Edwards & Co., was for the defendant.

Mr. Edwardes, the well-known impresario, had commissioned Mr. Moore to write him a play on the lines of Lever's novel, *Charles O'Malley*, and had paid him, I think, £150 for work done. While the work was proceeding, Mr. Edwardes seems to have desired that Mr. Tanner's name should be associated with that of Moore as collaborator—Mr. Tanner being a highly successful playwright. A copy of Moore's "scenario" of *Charles O'Malley* was handed by Mr. Edwardes to him. Mr. Tanner then wrote his very successful play *The Country Girl*, and Mr. Moore's *Charles O'Malley* was shelved. The question was, whether Tanner had in any way levied mail on the "scenario" in the production of his own piece.

The learned judge, in his direction to the jury, said : " The case was one of importance, and not without difficulty. There was no such thing as copyright in an idea, and if Mr. Moore had thought that he could get damages because he had communicated the *idea* of *Charles O'Malley* to Mr. George Edwardes, he must have failed. But if any one embodied an idea, in concrete form, in a play, a painting, or a book, he had a property in that, and if another person took and used it without his leave and license, he would have to pay for it, or

be liable in an action for damages. The only real question was upon what terms and considerations the 'scenario' was handed to Mr. Edwardes and Mr. Tanner, and whether or not a substantial part of the 'scenario' had been taken and made use of in the play produced with such great success at Daly's."

My task was an exceedingly difficult one. Personally I could see no resemblance between *The Country Girl* and Mr. Moore's play, but my clients or my junior, Mr. Kisch, had prepared a very careful analysis of resemblance, embodied in particulars, giving thirty-three instances.

Mr. Huntly Wright gave evidence—he who played "Barry" as an Englishman in *The Country Girl*—a character said to be identical with "Micky Free," and from some alterations which appeared in Mr. Tanner's play, it was clear that originally the character of "Barry" was contemplated as that of an Irishman. We had three days' hard work, and eventually I obtained a verdict for my client with £100 damages. It was somewhat curious that a few years afterwards a gentleman brought an action against Mr. Edwardes on almost similar grounds, and recovered damages. A musical composer has recently written an opera, challenged as bearing a suspicious resemblance to a work by another composer. Apparently he knew nothing of his rival's composition, and it has been suggested *telepathy* may have had something to do with it—perhaps so!

There was an amusing incident in the case, in which a little banter on my part was taken seriously by Messrs. Nelson & Co., the well-known publishers, who, on issuing a new edition of *Charles O'Malley*, printed and distributed largely a circular notice in which the following appeared:—

BENCH AND BAR IN LEVER'S PRAISE

The following colloquy recently took place in the King's Bench Division, High Court of Justice, during the trial of a theatrical action:—

Mr. Crispe, K.C.: "‘Charles O'Malley; or, the Irish Dragoon,’ is a novel full of adventure, incident, and activity."

The Lord Chief Justice: "If the jury have not read it, I would advise them to do so."

Mr. Crispe, K.C.: "If I might be permitted, I would endorse that recommendation on my own account. It's a book which I loved when a boy, and one which I hope I shall love *when I become an old man.*"

Messrs. Nelson did not print in italics the last six words, which, as I intended, produced some amusement, as it was evident that I had long since passed the grand climacteric.

THE DRUCE CASE

The "Druce Mystery" has so recently occupied the attention of the public, that anything beyond mere comment on my part would be out of place. As, however, I was for some time behind the curtain, a few remarks, without betraying any professional confidence, may be interesting.

I pass over the litigation of Mrs. Anna Maria Druce, by which she claimed that her son was the Duke of Portland and entitled to the estates which followed the title. The proceedings came to an untimely end, Mrs. Druce became insane and was placed in an asylum.

Mr. George Hollamby Druce then appeared on the scene, supported by Mr. Coburn, an Australian solicitor, who abandoned his practice to follow the fortunes of his client. George Hollamby claimed to be, and undoubtedly was, grandson of Mr. Druce, who married clandestinely, at St. Albans, Miss Crickmar, a young lady of good family. The formalities preceding marriage at that time were stringent, and the parties being minors, it became necessary for Mr. Druce to commit certain frauds to obtain the necessary marriage license. As the law then stood the marriage was invalid, the consent of the parents not having been obtained. An alteration in the marriage laws some years afterwards, and which was retrospective in effect, made the invalid marriage good and the issue of it legitimate.

As to Mr. Druce, there was, according to the traditions of the Crickmar family, much mystery—where he came from and who his parents were nobody knew, and even now, apparently, no one knows. He had several children by his

wife, and then, so the story runs, deserted her and for a time was lost sight of. He was eventually found to be trading in London as Mr. Druce, of the Baker Street Bazaar. He traded successfully and made a fortune. At the death of his wife (Miss Crickmar) he married Miss May. They had children, one of whom was Mr. Herbert Druce, who became associated with him in business. When Mr. Druce died he left his son George, who had been for many years in Australia, £1,000. This George was a son of the Crickmar alliance and father of George Hollamby Druce.

The seed of mischief in the "Druce Mystery" was a mere village canard at Hendon, that the death and burial of Mr Druce was a delusion, and the funeral a farce. An old nurse who gave evidence in the proceedings against Mr. Herbert Druce on his prosecution, proved to demonstration the death and burial of his father, which the exhumation of the body put beyond all doubt, but she admitted the existence of the village gossip.

The Australian Druces, commencing with the mystery as to the parentage of Mr. Druce, and from portraits which bore some resemblance to the fifth Duke of Portland, came to a conclusion that the Duke and Druce were one and the same man. Hence, as matters developed, the wonderful story of the dual life—the Duke masquerading as Druce—and eventually the plot to get rid of the inconvenient duality by a mock death and burial of Druce. The idea seems fantastic and the whole bubble would have burst by what ought to have been the easy proof of who the parents of Druce were. Mr. Druce, by admitted portraits, was a handsome and aristocratic man, but beyond asserted resemblance, there seemed nothing to show that he was the Duke of Portland. Mr. George Hollamby Druce, however, came to the conclusion that he was heir to the title, and not only to its estates, but those, in part, of Lord Howard de Walden. From what I have seen of him, I have no reason to doubt that he honestly so believed. And he certainly had the right to do so if faith could be placed in the evidence he had in support.

The *fons et origo malorum* was Mrs. Hamilton, who

with a skill scarcely human, invented a series of incidents which, if true, indubitably proved the dual existence.

Shorn of detail, her story simply was that she was the daughter of a libertine gentleman of the name of Stuart, who was the intimate friend of the Duke, his go-between in some of his amours; that her father had taken her more than once to Welbeck, that she became a favourite of the Duke (then Marquis of Titchfield) and learned from him and her father that he was also Druce of Baker Street. Beyond that she had seen him as Druce at the Bazaar and had learned from her father and the Duke of the intention to destroy the duality, by the pretended death of Druce and—burial of an empty coffin. With much elaboration and detail the story was worked out in most consistent fashion.

In another chapter I have admitted my innocent credulity in regard to the Claimant—then based on my acquaintance with him and the Dowager Lady Tichborne. I have now to confess that at one time I was the dupe of Mrs. Hamilton. I was then advising on matters prior to the litigation, and I suggested I should see the lady at my chambers. She came to see me, and I certainly was impressed by her appearance—a cheery-looking old lady, well educated, and with very good manners. At first she was a little diffident, but I soon put her at her ease and reduced the consultation to a chatty interview, during which I was cross-examining her, but without her knowledge. She told her tale perfectly. Referring to the Duke's sisters when she was at Woburn, I said casually, "I suppose you were the special favourite of one of the young ladies?" Her face brightened up as, without a moment's hesitation, she answered, "Oh, yes! dear Lady Augusta!" The answer was quite spontaneous.

It was well known that the Duke suffered from a skin disease—so also Druce, it was said. It was alleged that George Druce and some of his children suffered in like manner, and Mrs. Hamilton had, I fancy in an affidavit, stated she also suffered from an eruption. I asked her if that were so and she said yes, she did. Now, Mrs. Hamilton professed that the Duke was her *godfather*, and I did not

see how the hereditary taint came in. I suggested my difficulty. Her explanation came at once, without hesitation. “Why, Mr. Crispe, don’t you know that the Duke’s father married a Scott and the disease was in that family, and my father’s mother was a Scott?”

It was wonderful with what readiness she answered. I came to the conclusion she was an honest witness. I understood she was a woman of some means and as far as I could ascertain had no money interest in the case. My connection with the matter did not last long after this. I fear I was too pessimistic and, further, expressed a strong opinion *that*, whatever the merits might be, George Hollamby Druce must fail—that the pedigree showed that his father George had an elder brother and that his descendant, Edgar Druce, was the person entitled, if any one was. On this George Hollamby was obstinate. “I am the Duke!” With him it was “Aut Cæsar aut nullus!”

Eventually, on the advice of very eminent counsel, an action was commenced against Lord Howard de Walden. In the course of interlocutory proceedings an order was obtained for the examination in chambers of some of the aged witnesses, among others Mrs. Hamilton. Mr. Avory cross-examined her to the effect that her story as to her being the daughter of Stuart was a fabrication—that, in fact, she was the daughter of another man, that she had brothers and sisters, had lived with her parents, except when living with her grandmother, and that her grandmother had left her a fortune of some £5,000. Mrs. Hamilton admitted all this, save that these people were her parents—that she denied, and asserted she had been placed with these people by Stuart and adopted by them. That was her answer.

In the police proceedings Mr. Avory proved to the hilt the falsehood of her alleged parentage.

As it was impossible to rely on Mrs. Hamilton’s evidence, the solicitors and counsel retired from the case. Another solicitor was found in Mr. Kimber, who threw all his energies into the matter. Some further wonderful evidence was obtained from a witness in America, Mr. Caldwell,

who had been the intimate of the Duke and his confidant ; who had cured His Grace of a skin complaint, for which he was rewarded by many thousands of pounds, and who had actually been employed in carrying out the whole of the details of the mock funeral, and, as to the duality, confirming Mrs. Hamilton.—To carry on matters a company had been formed, “Druce, Limited ;” the shareholders were jubilant, and shares were at 100 per cent. premium and over.

Of course, if the evidence of Caldwell were true, the contention as to the dual existence was proved. Caldwell had lived for many years in America, and his antecedents could be easily traced. Mr. Kimber himself went to America to make inquiries and came back content with the repute and credibility of the proposed witness. At that time the civil action against Lord Howard de Walden was slowly proceeding.

Then came an interlude—the prosecution of Mr. Herbert Druce for perjury in an affidavit sworn by him as to his father’s death. I was not, at that time, in any way connected with the interests of George Hollamby, save that I had a shareholder’s interest in the company. In that capacity I protested, in the strongest possible manner, against the steps proposed to be taken. I considered them simply monstrous. I was told that the directors of the company, in conjunction with a committee of the shareholders, were acting under the advice of counsel. That any counsel could have been so reckless as to advise such wicked proceedings shocks me. I can imagine nothing more cruel or more vindictive. I need scarcely say that Mr. Atherley-Jones, K.C., and his junior, who appeared on the prosecution, had nothing to do with the initiation of those proceedings.

We all know of the theatrical show, given for many days at Mr. Plowden’s court, in the presence of a brilliant and distinguished audience of ladies—the exposure of the scoundrel Caldwell, who, despite the apparently perfunctory inquiries made as to his integrity, was a well-known rogue, and who had been pilloried in the New York papers as a blackmailer and “champion” affidavit-maker. Had Mr.

Atherley-Jones been aware of this, he certainly would not have called a man of such tainted character. Why he was not informed is a matter of speculation. Caldwell still waits his fate—he left the country, slipping through the fingers of the Scotland Yard officials, and still remains to be extradited when the New York authorities think fit.

But there was still another witness, Miss Robinson, the New Zealand lady, who claimed to be the intimate friend of Charles Dickens, through whom she obtained the position of amanuensis to the Duke of Portland, and who had kept a marvellous diary of her life—a diary which, when it was wanted, was, so she said, stolen from her. A very clever woman, of wonderfully inventive mind.

We know the end of the case. After Mr. Herbert Druce had been exposed to the agony of a prolonged investigation, consent was tardily given to the opening of the grave at Highgate Cemetery, with the result that the body of Mr. Druce was found in the coffin. Mrs. Hamilton and Miss Robinson were duly prosecuted, and are now enduring their well-earned punishment.

Sir Harry Poland wrote some strong letters to the papers, suggesting prosecutions. It seems probable that, in regard to George Hollamby Druce and Mr. Coburn, the Public Prosecutor found nothing whereon to found a charge. My knowledge of these gentlemen extended over a period of three years, and I think it fair to say that in my view they honestly believed in the claim they hoped to substantiate.

It is a matter of regret that once and for all time points in doubt were not cleared up. The *Idler*, it will be recollected, offered a reward of £100 for a copy of the certificate of birth of Mr. Druce. As far as I know no certificate has been forthcoming. The advisers of Lord Howard de Walden were accused of being concerned in the disappearance of Miss Robinson's diary; Lord Howard de Walden has been harassed by costly proceedings, involving a slander of title as to his estates; and Mr. Herbert Druce has been exposed to a trying prosecution, including a scandalous libel; and yet no retributive steps have been taken.

CHAPTER XX

ROMANTIC UNTRIED CASES

THE Bar affords, perhaps, a wider sphere for the study of human nature than any other profession. The bright side, the tragic and the seamy sides of life are open in all their attractive and sordid varieties. Allied with the family solicitor, the barrister becomes the safe depository of secrets, the disclosure of which might smirch the good fame and honour of others, whose honour and fame had hitherto been unimpeachable.

The barrister has clearly one duty : to endeavour to effect a settlement of cases in dispute, and to avoid, if possible, the *exposé* of family indiscretions in a court of law. It is the exercise of that duty which deprives the public of many a romance ; the cases untried being frequently more interesting and startling, than those which go to a jury. I offer three, out of many in my own experience. I am obliged, for obvious reasons, to alter names and dates, and to exercise some license as to facts. The main features are absolutely true.

The first case is that of Dawson *v.* Dawson. In 187— an advertisement appeared in the *Matrimonial News* in which a “ young widow lady,” with some fortune, desired to make the acquaintance of a gentleman of good position, with a view to matrimony. A Colonel Dawson (all Dawsons may be easy—that was not his name) saw the advertisement and, probably in a spirit of adventure, answered it. The result was an exchange of photographs, some correspondence, and an interview. The latter took place at the lady’s rooms in

Hanover Street. The Colonel found himself in the presence of a very charming woman of lady-like demeanour, who, as she took his hand, burst into a merry fit of laughter, much to his chagrin.

"Oh!" she said, still laughing, "Colonel Dawson, do forgive me! I cannot help it. You are the victim of a practical joke——"

"Indeed!" said the Colonel, somewhat stiffly.

"Yes! I put in the advertisement, to see how many fools would answer it, and—and—Colonel—do—do forgive me, you were one of the fools!"

And she laughed again; and the Colonel, who was somewhat tickled, heartily joined her.

"But," the lady continued, "I told *a big* tarradiddle. So far from possessing a fortune, I have, alas! to earn a living. Look round; this is a hive of work. There's my piano and my music. I sing at a concert when I can, or a Masonic dinner, and teach singing when I have any pupils. There is my guitar. My daughter Ada is learning it. Yes, I have a daughter ten years old. There's my sewing machine. I make my own dresses, and hers too."

She then called Ada, and introduced her, a shy, retiring child, and rising again, addressed the Colonel. "And now, Colonel, I have only to say goodbye, and forgive me."

The Colonel pleaded that an acquaintance thus strangely commenced should not be so abruptly ended, and begged to be permitted to call again—a consent was, apparently reluctantly, given. Six weeks afterwards they were married at St. George's, Hanover Square, the lady, Mrs. Farquhar, being given away by her "family solicitor." As to who "Farquhar" was there seemed some doubt.

After the honeymoon the Colonel and his wife went direct to his country seat. The Colonel was a man of good fortune and connections, a widower with two young children; but although he took his place among the county families, Mrs. Dawson soon found she was not to take hers. The woman who had been picked up, nobody knew how, and no one knew whence, was not within the pale.

Mrs. Dawson submitted to her ostracism with perfect equanimity, Ada was sent to boarding-school, the little Dawsons remaining under the wing of their stepmother. In the years that followed Mrs. Dawson behaved in such exemplary fashion that at last some of the great ladies condescended to look at her, and, as they found she had the air of a well-bred woman, to give her an occasional "How-d'y-do?" There was, however, one thing fatal to her *entrée* into the society of the elect—Mrs. Dawson had not been presented at Court. The Colonel's married life had been quite a happy one; he had found his wife a charming and interesting companion, and she had been quite a mother to his children. He had an old aunt, Lady Blarney, into whose good graces his wife had managed to get, and eventually she agreed to present Mrs. Dawson at the next Court, at which that lady would, in ordinary course, wear the family diamonds.

All went well. Ada had finished her education, and returned from Paris. For a writer of fiction she would have formed an admirable study. She possessed much of the attraction of her beautiful mother, but in the place of the gaiety and *verve* of a girl fresh from Paris, she was serious, and even sad in her demeanour. If she had been older she might have been a girl with a past. Her affection for her mother was intense, and she was good friends with the Colonel. Her subsequent betrayal of her mother, except from a novelist's point of view, was inexplicable.

For some weeks prior to the Drawing Room the family had been staying at the Colonel's town house in Chester Street. Ada seemed more depressed than ever; she appeared to be under the influence of some ban, some terror. The Colonel rallied her, tried to raise her spirits, took her to the theatre—all to no purpose, nothing but settled gloom. He spoke to his wife about her, she merely shrugged her shoulders—she knew. The Colonel at last determined to speak to Ada seriously, and one afternoon he did so; in a kind and fatherly way he pressed her to tell him what trouble was so affecting her. He insisted, and at last she blurted out, "My mother must not be presented at Court."

The Colonel thought she must be suffering from hallucination, but pressed for an explanation; and at last the girl burst into tears and said, "*My mother must not be presented; she is a convicted thief.*"

One can imagine the horror of the poor man, and can forgive him going to his club and taking more wine than was good for him. He dined not wisely, and when he got back to Chester Street it was one o'clock in the morning. He was dazed with his trouble and not over-sober. While fumbling with his latchkey the door was opened by his wife. She at once saw his condition, and reproached him. It was a bad example to the household, to his children, and she continued to rate him until she had followed him into the dining-room.

He then faced her, and, hiccuping his words, cried out—

"How *dare* you speak to me like that!—how *dare* you—you who are no more than a convicted thief!"

It seems to me the situation is worth staging. A good title "The Peccable Mrs. Dawson." How well Mrs. Patrick Campbell would take the *rôle*!

Mrs. Dawson did not faint, or venture on hysterics; she was moved deeply, but quite calm. She made no denial. At last, after a pause, she said, with a forced laugh—

"Well, what are you going to do?"

That was what had puzzled the Colonel. What *was* he going to do? Of course, legally, he might have insisted on his wife leaving his house the next day.

Instead of answering, he took some brandy and soda; and that, with the great excitement, sobered him.

"What are you going to do?" she repeated; and then, appealingly: "Have I been a good and faithful wife to you?"

"Yes."

"Have I been a tender and affectionate mother to your children?"

"Yes."

"Have I brought them up and educated them to your satisfaction?"

"Yes."

"Have I kept your house well, and shown you every solicitude?"

"Yes, yes!"

"Well, then, what are you going to do? Are you going to make yourself the laughing-stock of the whole countryside as the man who was fool enough to marry a woman through an advertisement in the *Matrimonial News*—a woman who was no more than an adventuress—a woman who had done time? Yes, it is true! I *am* a convicted thief. But, *if* you knew the truth you would *pity* and not despise me. What are you going to do?"

The Colonel was very sensitive to ridicule, and he loved this woman very much. She had been an admirable wife, and, further, he knew he could not divorce her. All he could do would be to separate from her. He would still be tied to her, and he dreaded the *esclandre*. At last he surrendered; but with a reservation, which his honour as a soldier of the Queen dictated.

"I forgive you!" he simply said; "but there must be no presentation at Court."

Mrs. Dawson, with a sigh of relief, began to banter him in her clever way, resuming her perfect self-control.

"You are a *dear*, old fellow," she said; "but you are a goose. I *must* be presented at Court. If I am not, what explanation can you give to our friends in town and country? What are you going to say to your aunt, Lady Betty Blarney? Besides"—and with a laugh she gave a woman's reason—"I've bought my Court dresses, and my plumes, and I want to show the famous diamonds."

A week afterwards Mrs. Dawson kissed the hand of Royalty, and the *Court Journal* noticed the beauty of her jewels.

For some years the home-life of the Dawsons ran smoothly enough, and the "coming out" of Miss Dawson was on the *tapis*. She was to be presented by her stepmother.

One day the Colonel asked his wife for the family jewels—some would have to be worn by his daughter. They were

produced, and on going through the list the Colonel missed a very valuable diamond cross. He somewhat suspiciously asked his wife where it was. Mrs. Dawson said, "I have lent it to Ada." Ada was staying with some friends at the time, at a house party. The Colonel shrugged his shoulders.—"You do not think I have stolen it?"—"Well!——" said the colonel, but did not utter his thoughts. "I will send for it!" added his wife. On its arrival the Colonel examined it, and came to the conclusion that the jewel had been tampered with, that the cross had been reduced in size, and some of the most brilliant diamonds extracted. No doubt he was wrong; but although he kept his opinion to himself, it rankled—his wife had been a convicted thief.

About that time a marriage had been arranged between Miss Dawson and a man of some means, Mr. Savile Rowe. One day the Colonel met his future son-in-law at his club, and incautiously told him of his suspicions as to the diamond cross. Mr. Rowe poohpoohed the idea as to the abstraction of the stones—it was preposterous. The Colonel then, like a fool, took the younger man into his complete confidence. Mr. Rowe was furious. "What!" he said, "my affianced wife presented at Court by a common thief, an adventuress!—continue to associate with a convict! No, no, my dear Colonel! the woman must leave your house at once. We'll go together, and away she goes."

The Colonel, lamb-like, went to Chester Street. In the dining-room they found Mrs. Dawson. Rowe, with much brutality, preferred his charges against that lady, and threatened that unless she were out of the house by twelve o'clock on the following day he would have her up at Bow Street. Of course a mere idle threat—the husband had condoned her only offence against him. The poor lady's position was terrible. For years she had led a happy and reputable life, and now Nemesis and the sword.

She maintained her usual *sang froid* during the tirade of abuse heaped upon her. When Rowe had exhausted it Mrs. Dawson appealed to her husband. Was it fair, ignorant of the law as she was, that she should act on these menaces, without

having advice? The Colonel, who was a gentleman, agreed at once that she should have the opportunity of consulting a solicitor, and they left the house, but not before Rowe had repeated his threats.

Briefly, Mrs. Dawson consulted an eminent West End firm, and at twelve the next day Rowe found himself faced by their managing clerk, a very wiry-looking man. Rowe again began to bluster, and insisted on Mrs. Dawson vacating, with the alternative of police intervention. The clerk then informed him that, under his firm's advice, their client would not leave the house, but he thought it as well that Mr. Rowe should do so at once, and that if he refused to go he should, with such force as might be necessary, do himself the pleasure of ejecting him. Rowe went; Mrs. Dawson remained.

Shortly after this the Colonel filed a petition for a divorce *a mensâ et thoro*, and in the course of the interlocutory proceedings, I was instructed in the case to appear for the wife, and in the Vacation received a brief to oppose a summons for an order that, pending proceedings, Mrs. Dawson should vacate the house in Chester Street. From copies of voluminous affidavits, I was enabled to learn the course of events much as I have placed them before the reader, supplemented by later knowledge.

At the hearing of the summons I found myself opposed by a learned counsel who, by the most marvellous coincidence, had been the prosecuting counsel on the charge for which the unfortunate woman had been convicted—a larceny, practically to get bread for her child. There being no precedent for the order demanded, the judge postponed his decision, but while I was away in Switzerland for the rest of the Vacation, I heard that his lordship had dismissed the summons. On my return I looked forward to at least one interesting *cause célèbre*, with good fees and advertisement, but, alas! it was settled. Practically the Colonel had no case, and poor Mrs. Dawson knew there was no *locus penitentiae* for a woman with a past—which had been found out. A liberal arrangement was, I understand, made by the Colonel, on the

condition that his wife resided abroad. Possibly at Monte Carlo a Mrs. Fonblanque might be seen, staking her pieces on the green table—a woman still retaining some of her early beauty—at her side her daughter, always tenderly solicitous and very sad.

The moral of this untried case is, Do not answer advertisements of young widows in a matrimonial paper.

CHÂTEAU EN ESPAGNE

A commission I had in 18—, to examine witnesses in France and Spain, afforded incidents which possessed the elements of romance. The cause in which I was retained, arose out of a husband's petition for divorce. The late Mr. Hannen, son of the then President of the Divorce Court, acted as Commissioner.

We commenced our investigations at Bordeaux—where we did full justice to the admirable cuisine of the hotel and the gaieties of the city. Our next point of destination was Biarritz.

I arrived, very late one summer night, at Bayonne, and, trains not serving, chartered an open *fiacre*, with a pair of fine Andalusians, and a *cocher* clad like the "Postillon de Lonjumeau." We started at midnight, to the music of the harness bells, and the castanet clacking of the driver's whip. Our route commanded a sea view all the way, and with a bright moon casting its radiance over the Bay of Biscay, and with a balmy breeze freshening the air, the short journey was one to be remembered. I had wired to the Hotel Cavour, and on arrival found the proprietor ready and pleased to receive us.

We resumed work the next morning, the aid of the British Consul, Mr. Bellairs, being enlisted. Parenthetically I may say, I had previously visited Biarritz in the Empire Period, when I remember the Empress Eugénie occupied the villa which bore her name. Without state, she would take her two-sous chair on the sands and watch the ill-fated Louis—swimming and plunging with the rest of us.—But now for the story.

A foreign lady, married to a fairly rich Englishman, had made the acquaintance in London of a Spanish "Donna," whom she nursed through a serious illness. In return, she received an invitation to spend some months in Madrid.

With the consent of her husband, who was only too delighted, Madame, with a full purse, started for the land of the Hidalgo. At Madrid she had a good time, soon acquired the language, and in her lace mantilla and a high comb might well have passed for a donna of Castille. On her return journey her adventures commenced. As time was of no object to her, she thought the breezes of Biscay would refresh her after the *chaleur* of Madrid. She went to St. Sebastian and stayed at the principal hotel. At the same hotel she came across another invalid—a young gentleman, presumably Spanish, who was slowly recovering from a severe illness. He was attended by a nurse, a fine, handsome Basque girl who, Madame with her professional instinct saw, knew nothing of nursing. Madame determined to try her hand, and easily introduced herself to the interesting young stranger; he was decidedly good-looking. Soon it was *her* hand that adjusted the pillows of his deck chair, when the salt breezes were bringing back a little colour to his pallid cheeks. She had the opportunity of showing more than sympathy. He informed her that he had been expecting supplies from his parents, which had not arrived—that the hotel-keeper and the doctor were pressing him; he did not know what to do. This was a mere bagatelle to the kind-hearted woman. She freely placed her purse at his disposal, and equally frankly he used it as his own; so the bills were paid and pocket-money provided, and the man was touched and literally shed tears of gratitude in the emotional way of his countrymen.

In the hotel books he was entered as a Frenchman: Monsieur de Renouf—French—Residence, Paris—*Rentier*. The poor fellow watched every post for supplies, which did not come. The anxiety was retarding his recovery, and there were further dips into the bag of his benefactress, as he now called her. He naturally began to love this gracious

woman who was scarcely twenty years older than himself, but could certainly overscale him. At last, under a pledge of secrecy, sanctified by a Spanish oath, he confided to her that he was not Renouf the Frenchman, but Don Roderigo de la Salamanca, son of a grandee of Spain, the "Duc de Villa-villa," that he was at the head of a conspiracy to restore Don Carlos the Pretender to the throne of his ancestors, that everything was ready for a Basque rising, but that money was wanting. The duke was in disgrace and his revenue stopped, and he, Roderigo, without a penny—his life and liberty in danger.

Madame thought this was really something worth coming to St. Sebastian for—she was as romantic as a schoolgirl. But he told her more—that he loved her—and if her spouse in England could be got rid of, he would marry her. From that moment she, a future Grandee-ess of Spain, became a conspirator and active agent in the cause of Don Carlos. The disguise of Don Roderigo as a Frenchman had deceived his enemies. The pallid young man, with his close-shaven cheeks, bore no resemblance to the swarthy, barbed Cavalier, but it would be dangerous for him to be seen endeavouring to leave the country. The Don at once assigned to Madame the dangerous task of conveying incriminating papers across the frontier—it would be too great a risk to post them in Spain—so from time to time the lady crossed the border with documents concealed sometimes in her luxurious hair. But money was going like water.

The "Don," wearied by his enforced seclusion, at last determined to attempt an escape, and, to allay any suspicion, suggested that Madame should for the time pose as his aunt; she had only to make herself appear a little older, to easily pass for his mother's sister. Although it somewhat piqued her vanity, she effaced herself, in the interest of the great cause, and the flight took place without interference of the hoodwinked authorities.

As aunt and nephew properly certified by passports, they passed some months, staying at inns—Biarritz, Bayonne, Bordeaux—and even went to Paris to a meeting of con-

spirators which did not come off. All this cost more money. The few hundreds Madame had taken with her had long since disappeared, money remitted from her banker had gone, and the poor woman had had to pledge her valuable jewellery at the Mont de Piété, at Bayonne. I recollect its redemption. Roderigo was devoted to her, but he always wanted money; sometimes he was away for a week at a time, and always came back with empty pockets—the Great Cause.

At last Madame, in despair, wrote to her husband and told him frankly the whole story, in the most implicit belief in it, but with the reservation that she was to be the future Duchesse de Villa-villa, and she begged him to transmit £500 for the cause of Don Carlos. The husband wrote back that Don Carlos might be — before he would do anything of the kind. The application had an unfortunate result. It was ascertained at the Spanish Embassy that there was no plot existing, and no such duke as the Duc de Villa-villa in the Spanish nobility. He then placed the matter in the hands of his solicitors, who made inquiries as to the erratic aunt and nephew, the result of which was a petition for a divorce, with the Spaniard—who was a Frenchman—as co-respondent.

It was at this stage I was retained as counsel for the respondent by her solicitor. A great part of what I have narrated I had from the lady herself. The fact that she had so trustfully communicated with her husband was strong presumptive evidence of her innocence, and the subsequent examination of witnesses confirmed my belief in it. No one appeared for the Frenchman.

Vacation rambles on commission, with a handsome fee, good refreshers from start to finish, and all expenses paid is a pleasant way of spending one's holiday at other people's expense—our itinerary on this occasion Paris, Bordeaux, Biarritz, and Spain. The heroine of the *procès* had to accompany us; the Frenchman had signified his intention of giving his evidence in London and was playing a dark game.

We had a pleasant time; at Bordeaux we drank the “fine

wines," huge casks of which were piled up on the quays. At Biarritz we bathed on the Basque side, varied by surf bathing on the *côte* Napoléon, and we usually put in a day's work of five hours' duration. The Spanish witnesses at St. Sebastian were sent for, as the cholera was raging in Spain. The evidence was of the usual class—chambermaids and *valets-de-chambre* at the hotels. Auntie, it appeared, had acted with some discretion, and, so far as I could gather, had not imperilled her chances of becoming a Duchesse by an *affaire* with her pseudo nephew—he was content with her money. Her faith in him was still unbounded, but our conclusion was that the man was a mere *escroc* of the deepest dye. On our return to England I found that my client had filed a counter-petition against her husband, on various grounds, as to which there could be no doubt.—Divorced, the lady could marry the Don.

The Frenchman, finding remittances had ceased, came to London, and I had the advantage of seeing the *tricheur*. He was an interesting man, good-looking, and well dressed, very plausible, but an unmitigated rascal. He soon made it clear to Madame that to live in London, in the style he was accustomed to, meant money, and money he must have. This came to the knowledge of her solicitors, who suggested to the man that he should return to his duties of State in Spain, as his evidence would not be wanted for many months. He then showed his hoof, and made it clear that he thought it his duty, as an honourable man, to place himself in communication with the husband.

It was quite clear now that the man was a blackmailer, and they treated him accordingly. A stalwart clerk, who had accompanied the commission, went to his hotel, and after a stormy interview, the Frenchman showed fight, with the result that the clerk nearly shook the breath out of his body, and gave such an exaggerated statement of the terrors of the English law, that the gallant Don, frightened for his life, preferred the alternative of going to the railway station instead of the police station, to which the clerk proposed to conduct him. His passage home was paid, and on arrival in France

he was arrested on various charges of fraud in which the Basque maiden, the quondam nurse, had been an accomplice—found guilty, he was condemned to seven years at the galleys and "Marie" to a shorter and less active punishment.

Perhaps wisely, the parties elected to let matters rest, and eventually the husband dissolved the marriage-tie by his own dissolution. The lady's *malheur* was the possession of a too credulous heart.

BOY OR GIRL

The third untried case, which I offer to my readers, is perhaps the most remarkable. Here again I have to alter names and places. I also, once more, adopt the narrative form.

About the year 1878 a Mr. Tyson, who had made a fortune in Mexico, settled in England. As he was comparatively young, of good family, and wealthy, he was a lure for the match-maker, and in his first season married a very beautiful young debutante. There was not much love on the girl's part—she was simply one of those "consentients," whose marriages are made in Mayfair, or a warmer latitude. It was not altogether an unhappy marriage. Tyson was a good fellow in the main, and his wife—well, discreet! It was said that she would have preferred marrying a handsome young cousin, but means did not permit of the alliance.

About six years after the marriage Tyson, by rash speculation, lost the best part of his fortune, which for the time mentally unhinged him. He treated his wife with brutality—slept with a revolver under his pillow, and was guilty of many eccentricities. It was now clear the man was mad, and on the usual examinations, an order being obtained, he was sent to a private asylum.

Dates now become material. Mr. Tyson was received into the house of a well-known mad-doctor on June 1st. He remained under his care for six months, during which period his wife did not see him; as a fact, she had gone abroad

with their daughter. On November 30th he was discharged as perfectly cured—the aberration had been merely a temporary one.

Tyson at once began to put his affairs in order, and his brain was as clear as a bell. I can testify that when I met him, he was as sane as myself. Naturally, he desired the return of his wife. On this a married sister of hers saw him and broke the startling intelligence that he was soon again to become a father. That delighted him. It was pointed out, however, that his wife, who was in Paris, still had a morbid fear of him, inspired by his personal violence, and that if he went over to see her, as he then proposed to do, the result might be disastrous. Like a sensible man, he submitted, and as his wife would not write to him, he had to depend upon her sister for news.

From his sister-in-law he learned every week how things were progressing—everything was going on well, and an eminent Paris accoucheur had been retained. On February 15th in the following year a telegram was received : “*A fine boy ; both doing well.*” This wire he personally received from his *belle-sœur*, who had gone over to her sister, to be with her at her confinement. A letter followed, stating he must not think of coming over, as his wife was still in a highly excited state. He submitted, and from time to time received news of the progress of mother and babe.

The birth of the child, at the Rue François Premier, Paris, was duly advertised in the *Morning Post*, and Mr. Tyson received the congratulations of his friends, and among others of his wife’s cousin, who had been most kind to her during his unfortunate absence from home. The birth, on February 15th, was quite consistent with Tyson being the father of the child—it was not until June 1st that he was placed under restraint. Now, as a fact, *no child had been born at the date given*, and the sisters, to save the fair fame of the one, had adopted an ingenious device. It was quite clear that a child born in or near the middle of April could not possibly be the child of Tyson, so these clever ladies put the clock back.

They had to meet an initial difficulty. It was impossible to determine the sex of an unborn child—modern science has not yet solved that question—so they had to guess; and they guessed a boy—and a boy it was on April 20th. It would have been awkward if it had been a girl, and still more so if the husband had gone over and found his two months' old child such an abnormally little one. Luckily, Tyson had to go away to Buenos Ayres on business, and was absent for some months. On his return he found his wife still abroad. He was told she was in Switzerland with her children. He insisted on her returning to him; she refused. He then demanded that his daughter should be sent back to him. He again met with a refusal. The father has the right to the custody of his child, except of the infant in arms, and in such right he applied to the court for the production of the child and its custody.

In the *habeas corpus* proceedings I appeared for Mr. Tyson. I did not succeed, and very properly so, the judge deciding that a man who had been insane a year ago, and might become insane again, was not a proper custodian. Mrs. Tyson's whereabouts were kept secret—her people being afraid of his violence as he seemed again to be getting unhinged, but he was determined to see his girl. He thought at Paris he might be able to get his wife's address or some information by which she might be tracked.

To Paris he went, but at the house in the Rue François Premier he could obtain no intelligence as to the whereabouts of his wife. He then easily obtained at the Registry a certificate of his child's birth, and to his horror learned how he had been duped. He at once placed himself in the hands of an inquiry agent, who found out the doctor who officiated at the birth on April 20th, and the nurse who attended the confinement. The poor fellow was agonised, and on his return to London filed his petition for a divorce.

Unhappily, or happily, he had a return of mania and died soon afterwards. When a decent time had elapsed, Mrs. Tyson married her first love, who had come into a fortune, and presumably they lived happily ever afterwards.

In offering these curious cases for the reader's edification, I again repeat that although the material facts are absolutely accurate, I have been compelled to draw somewhat on my imagination, for the reasons I have stated.

They illustrate Byron's lines :—

“'Tis strange—but true ; for truth is always strange ;
Stranger than fiction.”

PART II

Amoto quæramus seria ludo

CHAPTER XXI

THE BAR AS A PROFESSION

TO those who contemplate the Bar as a profession—to those who have adopted it and are still in their chrysalis stage of pupilage, and to the early called who have the right to wear wig and gown, I venture to offer the best advice I can give.

As a profession the Bar, to my mind, is the most delightful of all avocations. Given a man who knows his law, is a fair logician, a fluent speaker, who can hold his own in argument, who has a knowledge of human nature, who can weigh the metal of juries and plumb the depths of witnesses, who possesses good-humour, intelligence and tact, who has some grace of style, a spice of wit, and who can wreath the garlands of rhetoric—I can imagine no man occupying a more enviable position. He has fortune, promotion, and possibly rank before him. The choicest prizes the Crown offers may be won; he may even have to keep the King's conscience. If he is ambitious he finds the widest fields to delve. If he is popular—Society welcomes him. Playwrights and novelists idealise him. The Senate is open to him, and if his dip into the political lucky-bag is successful he becomes that for which his training has well fitted him—a maker of laws.

The choice of a profession does not always depend upon



A BOVE MAJORI DISCIT ARRARE MINOR

the one most interested. The boys have to be started in life—one must go into the Army, in which he may become a colonel without having been in action; another in the Navy, and there attain the rank of rear-admiral without having fired a gun, except in mimic warfare, neither having reached the acme of his ambition—the activity of battle.

I recollect walking in the Row with a friend of mine, an army man, and his little son. "Well, Hubert," I said to the boy, "what do you intend to be when you grow up?" "Oh, I'm going to be a soldier, Mr. Crispe!" "Ah!" I returned, "but, Hubert, suppose you were killed?" "Oh, no!" he replied, "I need not be killed. Papa has never been in action!" The Colonel winced. The son is now in a crack regiment, has not been in action, but may have his chance—when the next great trouble comes.

To return to our sons. One boy may choose to be a bone-setter or a medicine-man; another must necessarily enter the Church—he may become a fighting parson or wear the gaiters of a dean; but if you have a boy who combines in himself all the best qualities of the others, make him a barrister.

The choice of the Bar as a profession is usually the lad's own—if happily his people are rich, his University education fits him for and often leads him to the Bar. He is known at his college as a fine debater, an admirable actor; he is bright, keen, and popular—these are the essentials.

Sometimes the parents are not well off, but a struggle is made, the money is found, and the boy has his Alma-Mater. I recollect an instance where such a sacrifice was made, and the lad came out Senior Wrangler, went to the Bar, and became a judge. A University education is not, happily, a necessity; many men have attained the highest positions at the Bar without it, but it is a great help—acquaintances are formed which may be useful in after-life, and the status is not without its value.

I have pictured the attractions of the profession at the commencement of this chapter. Let me now consider the other side of the canvas—a very rough surface.

I refer especially to men who will have to depend entirely, or almost entirely, on their own exertions to make a living, not to those who are, happily, outside sordid considerations, who have had their ample allowance at college and liberal supplies during the long period of waiting—who are free from financial worry.

I strongly advise a man who is in needy circumstances not to join the Bar; if he does he is inviting a life of grave anxiety. From the time he becomes a member of an Inn three years must elapse before he can be called, with sometimes a slight concession—a period not too long, even to obtain a rudimental knowledge of the law. During this time he is almost precluded from earning money. He has to sign a declaration before he can be admitted as a student, and he will find *twenty-seven* special heads of employment which will disqualify him, and one general declaration that he is not engaged in trade. No doubt this is salutary, but it is inconvenient. He may perhaps make a little by his pen—the worst thing for him, as he has to neglect his studies, and may become a votary to the skirts of Literature, as Frank Burnand, Montagu Williams and others, and drift from the Bar, as Sala and many have done. Assume, however, he is in earnest; let him consider the expenses of the venture. I deal with this more fully elsewhere. He starts with a payment of one guinea for an admission form—£40 6s. 3d. on admission, which includes stamps £25 1s. 3d.; he has to deposit £50, unless he has two substantial friends who are willing to become bondsmen for him, in which case he will only have to pay interest at 4 per cent.—£6; he has to pay an annual duty of £1; on his call he has to pay £99 10s., £50 of which is for stamps. All this if he be a member of the Middle Temple. He will, therefore, have disbursed £195 16s. 3d., but as there are many gratuities, voluntary of course—in round figures he may say £200.

The Inn has treated him very liberally—he has to pay £40 a year for three years, to give him the finest legal education which can be provided. But he has to pass some very stiff Examinations; to assist him he is provided with a staff of

teachers ; for this privilege he has to pay five guineas on admission, which sum franks him throughout. A good coach may cost him something considerable ; if he be very clever he may dispense with this aid. Then there are books to buy, and law books are dear. Immediately he is admitted he subscribes to the Law Reports, and commences the nucleus of a library. Then chambers must be shared with some one. He must live like a gentleman, and can scarcely spend less than £3 a week. Altogether, with his "Call to the Bar" he will have spent £800 to £1,000: increased if he is "ploughed" in his exams and has to try again.

He is called ; he ought now to read with some good junior who takes pupils—that will cost him £100. He must have chambers, or share them with some one ; he must have a clerk, who will want a guarantee of a weekly sum, and the fees when they are earned ; if he be very hard up he must be content with "part of a boy." But appearances go some way with solicitors, and they don't like poverty—but there are some smart boys in the Temple, with quick intellects ; some have been choristers of the Inn, and in the past not a few have become judges' clerks.

I recollect a good story of one. His master, a young "Briefless," was perambulating the courts with an air of scarcely being able to find time to do anything—when his boy tracked him down in one of the corridors. "Oh, sir !" said the boy, "there's a man at chambers with a brief, sir !" "*What, a brief! Great Heavens!*" And the young fellow began to run through the passages as fast as he could, for fear the prey should escape him. "Stop, sir, stop !" cried the boy, who could scarcely keep pace. "You needn't hurry, sir ; *I've locked him in!*"

But a clerk is a necessity, and even if the junior is in chambers with other men, he should have a room to himself. Then he must join sessions, choose his Circuit, and when elected and entrance fees have been paid, "go Circuit," otherwise it is useless joining. If it is a near Town one, such as the South-Eastern, it will be not worth much to him—if a distant assize, he incurs heavy railway fares, hotel and cab

expenses, mess subscriptions ; and if he takes his clerk—which he ought to do—he may return home with ten guineas, or even draw blank.

In my humble opinion unless a man has £200 a year private income he had better take a back attic in Bloomsbury and become a literary hack.

But I must not dismay the future junior. He may be lucky and earn in his first year fifty guineas ; perhaps double in the second—the result of the third will pronounce his failure or success—it will be his jumping-time, and if the steed will not leap he must take it back to his stables—and give his Pegasus a mash. Most men have to wait many years before they reach the goal. But happily things move quicker now than when the old Serjeant unbent and, addressing his quondam junior, said in a patronising way, “And pray how long have you been at the Bar, Mr. Latitat ?” “Ten years, Mr. Serjeant.” “Ah !” returned the leader. “I wish you success, *young gentleman !*”

Some men jump into practice very quickly, especially if they have relatives or connections in the other branch of the profession, but even that is of no use, without ability. The competition is tremendous. There are approximately 2,700 barristers whose names appear in this year’s Law List. Of course, all these are not practising ; but on Circuit most of the men in the List are in harness. In mine I am in appreciable distance of being “Mr. Senior.”

I may here say generally, that it is of no use for a man to go to the Bar unless he has a very strong constitution, a vigorous physique, an independent income, the highest ability, and—*plenty of patience.*

I make these remarks in no pessimistic spirit. I should be sorry to dissuade any one from adopting a noble profession, in which, if he has the qualifications, he may earn rank, fame, and distinction.

I assume that such a man has joined, and I first address him as a Student in his gown.

CHAPTER XXII

ADVICE TO THE STUDENT

MR. STUDENT, as you have determined to become a barrister-at-law, I thus address you. Your first step will be to obtain admission to one of the four Inns of Court—the Inner Temple, the Middle Temple, Lincoln's Inn, or Gray's Inn. Should you elect to try the Chancery Division you will, in all probability, choose Lincoln's Inn, but with that Division this book does not treat.

Of the Inns, I deal simply with the Middle Temple. Your first information you will obtain from the courteous Under-Treasurer, Mr. J. W. Waldron, at the Treasury, in Middle Temple Lane. If you have passed a public examination, at any University within the British Dominions, or for a commission in the Army or Navy, or for the Indian Civil or Consular Service, you will be at once admitted as a student, unless disqualified by your acting in the capacity of a "Solicitor, Attorney-at-Law, Writer to the Signet, Writer of the Scotch Courts, Proctor, Notary Public, Clerk in Chancery, Parliamentary Agent, Agent in any Court original or appellate, Clerk to any Justice of the Peace, Registrar or High Bailiff of any Court, Official Provisional Assistant or Deputy Receiver or Liquidator under any Bankruptcy or Winding-up Act, Chartered, Incorporated, or Professional Accountant, Land Agent, Surveyor, Patent Agent, Consulting Engineer, Clerk to any Judge, Barrister, Conveyancer, Special Pleader, or Equity Draftsman, Clerk of the Peace, or Clerk to any Officer in any Court of Law."

But your disqualification does not end there. You must not be engaged in trade or be an undischarged bankrupt. As to all this you will have to sign a solemn declaration. But, further, you will have to obtain two separate certificates, of belief that you are a gentleman of respectability, and a proper person to be admitted as a student, with a view to being called to the Bar, each to be signed by a barrister of five years' standing. You will see, therefore, how jealously the Inns of Court provide against the admission of men to their august bodies who are disqualified by trade or inexpedient to be elected as members.

If you have not passed any of the alternative public examinations previously referred to, you will have to pass an Examination in the following subjects, viz.:—

- (a) The English Language,
- (b) The Latin Language,¹ and
- (c) English History.

All conditions being complied with, you can don your student's gown, take your place in the Middle Temple Hall, and commence "eating your Terms" at the Bar mess—a duty you will find by no means disagreeable. If at the time you are a member of any of the Universities, you may limit your attendances to three in each of the four Terms of the legal year, if not, you must submit to dine six times in each Term. As you will have a fair *menu*—soup or fish, choice of joints, vegetables, pastry, &c., as much very fine ale as you like to drink, a share, with three others, of a bottle of old port or of two bottles of lighter wines, and, on occasions such as the King's Birthday, Readers' Feast, Call to the Bench, an extra dish, a bottle of champagne, an occasional sip from the loving-cup, and, further, a cup of good Mocha—you will probably reconcile yourself to your fate, especially as the cost to you will be two shillings. At the Ancients' table,

¹ The examination on paper in the Latin language is easy, consisting of translations from *Cæsar's Commentaries*.

where the eight senior men in the Hall gather, you will see a dinner much more sumptuous and the wine allowance doubled; the charge still the contemptible florin. I have had the privilege of dining at that table many times, and hope to still avail myself of the privilege and to renew the delight of the society of my old friends.

Your thoughts, however, will be for other food—the literary manna in your intellectual desert, “sharp quilllets of the Law”—and you will find “old antic the Law plays many tricks.”

You are advised to attend in the chambers of a barrister, or a pleader, for the purpose of studying the practice of the Law, but you are not so compelled. With the view of turning you out a complete lawyer the Council of the four Inns have provided lectures, classes, and an able teaching staff, of which you will have full benefit. You will require this aid, both on account of the number of the subjects and the stiffness of the Examinations. You will receive systematic instruction in the following:—

1. Roman Law and Jurisprudence and International Law, Public and Private (Conflict of Laws).
2. Constitutional Law (English and Colonial) and Legal History.
3. Evidence, Procedure (Civil and Criminal), and Criminal Law.
4. English Law and Equity, viz.:—

(a) Law of Persons, including:—

{ Marriage and Divorce.
 { Infancy.
 { Lunacy.
 { Corporations.

(b) Law of Real and Personal Property and Conveyancing, including:—

{ Trusts; Mortgages.
 { Administration of Assets on Death; on Dissolution
 of Partnership, on Winding-up of Companies,
 and in Bankruptcy.
 { Practical instructions in the preparation of Deeds,
 Wills and Contracts.

(c) Law of Obligations:—

- | | |
|---|--|
| { | Contracts. |
| | Torts. |
| | Allied Subjects (implied or quasi contracts),
estoppel, &c. |
| | Commercial Law, with especial reference to Mer-
cantile Documents in daily use, which should be
shown and explained. |

There is the play fitted for you.

You will find an able staff of Readers, Assistant Readers, and Examiners. Dr. W. Blake Odgers will, as Director of Legal Studies, officially give you advice and assistance as to lectures, books, or any other matter affecting your studies. You will find him a most popular man in the Inn and a great favourite among the students.

In due course you will present yourself for Examination, at which you must satisfy the Examiners in each of the following subjects:—

PART I.

- I. Roman Law.
- II. Constitutional Law (English and Colonial) and
Legal History.
- III. Criminal Law and Procedure.

You must also satisfy the Examiners in one of the following subjects:—

- IV. Real Property and Conveyancing
or
Hindu and Mahomedan Law
or
Roman-Dutch Law.

Having succeeded in passing the Examination you may, after six Terms, present yourself for your final.

PART II.

THE FINAL EXAMINATION.

You will be examined in the same subjects.

Four papers will be set, namely:—

- (a) A paper in Common Law.
- (b) A paper in Equity.
- (c) A paper on the Law of Evidence and Civil Procedure.
- (d) A General Paper on the above subjects (a) (b) and (c).

Every student must present himself for these four papers at the same examination.

I assume you will have no difficulty in passing, but if you have any doubt—put yourself into the hands of a good Coach.

Your education, without stamps, will have cost you but little, thanks to the ample instruction afforded by the wealthy Inns, and as an incentive to activity you are offered some by no means despicable prizes. You may obtain a Certificate of Honour—a Studentship of 100 guineas per annum, tenable for three years—a special prize of £50, or you may obtain the J. J. Powell Prize of £15, the Campbell Foster Prize of 10 guineas, or the J. P. Murphy Prize of £10, for which latter you must be specially qualified as an Irishman, born of Irish parents resident in Ireland. It is astonishing at how low a figure “Pat Murphy”—as he was known to us—estimated the value of a countryman.

Having passed your examination, nothing more remains for you to do but to sign your declaration, in which, by preliminary, you state your desire to be called to the Bar.

A word first as to your surroundings, which in Chapter VII. I have partly dealt with. In the noble Hall you have everything to inspire you—the tradition of a place in which, history says, the Virgin Queen danced a minuet with the saltatory Sir Christopher Hatton—one of her virgin fancies

—you tread the boards on which Shakespeare's *Midsummer Night's Dream* was played—on the walls you see the portrait of Elizabeth and the wonderful Vandyck of Charles the Martyr—in the stained-glass windows the armorial bearings of judges, tracing back for many centuries—in the old oak panels on the walls, the coats-of-arms of Lectors, and dream that a space may be reserved for you. You note the old armour, which perhaps the Templars wore, the grand proportions of the Hall with its oak-raftered roof, its wonderfully carved screen, and an unpretentious marble bust of your Senior Bencher, His Majesty the King, when a young Prince of Wales. You can see, if you desire, the corridors, the Parliament and other chambers, in which are portraits of great and distinguished judges. To the Parliament Chamber, to which, as I have previously indicated, the Benchers retire for dessert and wine when dinner is over, you may have invitation—when you become an Ancient. There, eight happy men, when only one Bencher attends, are invited to wine. Beyond all this, you can lunch in Hall at a moderate price, and a pleasant Common Room is provided for you, with reading and smoking-rooms, and you can, if so disposed, play chess or draughts or read the light literature supplied by Messrs. Smith and Sons.

In this entourage you will have the opportunity of making many friends—make them—they may be useful to you. Become popular; be bright at mess; remembering always that your companions are men of culture. Never offend them by unseemly stories, however witty they may appear to you. Often you will find yourself in a mess of men who have been called—if you indulge in coarseness, woe betide you. Maintain the character of the Bar of which you are about to become a member.

Further, you have provided for you a fine library not only of legal but general literature. Here the estimable librarian, Mr. Hutchinson,¹ who is a scholar, will help you in any search

¹ In consequence of Mr. Hutchinson's retirement the late sub-librarian, Mr. Bidwell—a very able man—has been appointed in his place.

in regard to which you are in difficulty. Then you have the beautiful grounds, in which you may play lawn tennis or indulge in a game of bowls. You may pass a very happy and rational time as a student, and sometimes the Benchers will give you a ball, and always, once a year, a delightful garden party, which is one of the events of the season. If your taste leads you there, as it should do, you can attend service in the beautiful and almost unique church of the Temple, where, as a barrister, you will have your stall, and listen to the harmonies of the choir, the dulcet strains of the organ, and the scholar-like discourse of the Master of the Temple, and if the discourse prove too heavy, dream of the Knights Templar whose effigies are within your view.

Well—you *are called*, and I venture to address you as *Mr. Junior*. You have spent a great deal of money—you have not ill-spent a vast amount of time—have earned the right to wear a horsehair wig and to be dubbed Esquire. But you wish me to advise you how to get business.

Let me tell you first that you have joined a Trades Union, and must neither ask for, beg, nor steal that which you so much covet—a Brief.

My first advice to you is—*devil!*

CHAPTER XXIII

MR. JUNIOR

WHY not "devil"? You are one of the "Devil's Own." I do not know how you obtained the right to range yourself under the Satanic banner; possibly because, in the canonisation of saints in old Romish procedure, an official was appointed as the Devil's Advocate—to show cause why the holy one should not be canonised, or it may have arisen from the playful name given by Erskine to his legal corps, "The Devil's Own." The devil was always a favourite theme with Erskine. He would dwell on his grandeur, as described by Milton, and was once heard to say that he looked upon him as a great celestial statesman—*out of place*.

Being one of the elect—devil!

I am sorry to differ with my friend Mr. Plowden, who, in his delightful book, *Grain or Chaff*, seems to think devilling damaging. My experience is—and an ounce of experience is worth a pound of theory—that, in every sense, it is valuable. Finlason tells of my once dear leader, Watkin Williams [Mr. Justice Williams], that, being the son of a Denbighshire parson, and without interest, he made his progress at first purely by devilling. He used to attribute his start in life to the advice of Mr. Macnamara, who told him to be at Westminster and Guildhall every morning punctually at half-past nine, ready to "hold" any briefs which might be thrown in his way by learned friends overburdened with work. He followed this advice and gradually began to get briefs of his own.

The day after your call you go to the empty desk, and, unless

you have influence, you may so go for days, weeks, months, and even years. “Oh! if the boy could only get a brief!” say the poor people at home. The boy can, and even if it is not his own, it gives him the same chance as if it were. But how are you to obtain this position? There should be no difficulty. While you were a student, you have made many acquaintances—make as many more as you can. At the Bar mess—in the library—in the Common Room, in the corridors, in the courts—you elbow barristers, young and old, and fellow-students, many of whom may have been called before you were,—cultivate them.

When you are called you should get into chambers where there is plenty of business; some man there comes up to you in the library and says, “Hilary, old fellow, I wish you would look up a point for me.”—You express your delight and work all day for him. In shekels you get nothing—you do not even earn publicity, but you have been teaching yourself and obliging him—he will not forget. You are making yourself known.

Spend every spare moment you have in open court, and be there early. Always be at your chambers first thing; don’t say as some fools do, “What’s the use of my being at chambers at ten o’clock if there’s nothing to do?” You must be ready in case anything may come in. Once there, you can go to court and your clerk can fetch you instanter.

A brief in a County Court, requiring attention that day, was sent to counsel in the Temple. The solicitor’s clerk had orders not to deliver it, unless the counsel was in. Happily for me he had not arrived, and the clerk, having been given discretion, brought it to me. It was a claim for about 35s. under the Truck Acts; it went from the County Court to the Divisional Court; thence to the Court of Appeal, and finally to the House of Lords, where I was with Sir Robert Finlay; and is now a cited case. I must have made 200 guineas out of that small matter. Moral, get the repute for punctuality.

After all, attendance in court is a delightful way of spending your time. To watch the battle of wits, to note the edge of

keen intellects, the drama of life, to see the dives made into the dark pools of law—is something more than mere pastime. You note the mistakes that are made—how badly facts are marshalled—how weak the Counsel on the one side is in his law or his advocacy; you see the strength of the other Counsel—the case carried clean and neat to its finish. In the course of it, a point may strike you—perhaps something omitted. Communicate it to the junior in a way not to interrupt him—it may really be a point, and you will have pleased him. He will gain the credit of it; but never mind. I assume you are a good sort of fellow, and make yourself pleasant. There is plenty of *bon camaraderie* at the Bar; you will find men genial to you, if you are genial to them. Always be on the watch to be useful. Soon you will be getting known facially. A junior has to leave his leader; he knows your face. “Take a note for me, old fellow,” he says, as he leaves the court. You are delighted, though taking a note is not devilling, but see what even this may be doing for you. The case is important, and one of public interest. There are two juniors, and you are noting the second junior’s brief. The leader is the great Sir Edward Caxton, K.C.; you are actually sitting behind him, with a pile of papers before you. That looks well, and appearances go a long way.

Two barristers stroll in. “Who’s that fellow with Teddy?” says one. “Don’t know,” says the other. “S’pose he’s old Longshanks’s nephew—lucky beggar!” Longshanks is of the eminent firm, Longshanks and Lacklight. Two solicitors enter. “Who’s the young junior?” says one; “looks intelligent!” “Don’t know,” says the other. “Hi, usher, who’s the man behind Sir Edward?” “Oh! don’t you know, sir? that’s Mr. Hilary, sir,” says the usher, with an air of surprise at their ignorance. The usher takes quite an interest in you, inspired partly by the half-crown you recently gave him for some act of civility. Decent fellows are the ushers; always be civil to them. When there were three divisions in the Courts, the senior usher used to collect the “Easter vales” for the King’s Bench, the Exchequer, and the Common Pleas—three shillings a court.

You may fancy you are playing the jay—strutting in borrowed plumes. It may seem inconsistent with your views of gentlemanly feeling that you should appear to be that which you are really not. Well, when the usher tells you, as he is sure to do, of the kind inquiry, and who the solicitors were who made it, find them, and tell them that you were really only taking a note, and that you were not in the case. I do not know what they would say, but I can imagine how they would *look*—and what they would *think*!

It may be a senior has left his court, and you get the privilege of taking a note for him. You take it carefully in legible handwriting. When he returns he is able to give a rapid glance at your well-written page, instead of his junior inconveniently leaning over him to tell what has happened, or to show him his own scrawled brief.

There is an art in taking a note, whether you are in the case or not. I have often had to say to a careless junior, "Surely this is not all?" The answer, "I have put down what is material"—as if *he* knew. You never know what may happen. The case may go to appeal; your note may settle a point about which the judge was hazy—his note may be illegible. The leader may have forgotten his intelligent young friend, but you have been sowing seed and may reap. I recollect, when quite a tyro, Lord Justice Holker, that genial, good, and learned judge, paying me a high compliment when, in a case in which I had devilled, my friend's brief was handed to him. Whatever you do, is worth doing well. What is omitted as immaterial may prove the very essence of materiality.

There is another thing you may object to—putting yourself *en evidence*, plying, as it were, with your cab on the rank. I am afraid you must put your pride in your pocket—"pride, the never-failing vice of fools."

To succeed, you must be a man of business, and it is idle for you to hide your candle under a bushel. Some purists may differ from me. If so, I cannot help it.

If you industriously pursue the course I merely outline, you will soon have the opportunity of holding other men's briefs.

You will do your best, work your hardest, although you will get nothing for your task save *kudos*. You will guard your friend's interests just as if they were your own. There is one thing I need scarcely say—you must be loyal. To attempt, however indirectly, to capture your friend's client, to take a mean advantage of his confidence in you, would be disgraceful. In your early career you will have a good many briefs sent you to hold in the County Courts. Waiting for your case, you will be brought into more direct communication with your friend's client. He is getting a little tired of his counsel sending a representative; why should he send briefs to the rising man, who is becoming too busy to attend to them? You please him. You win his case. He sends you a brief; it is hard—but I should advise you to return it. In any case you must apprise your friend, and he will probably say, "Keep it, my dear boy."

See the strides you are making. In the County Courts the solicitors, as you know, have right of audience. You have a solicitor against you; you beat him thoroughly. You are just the man for him. He sees your go! and he instructs you. Besides which, whether in the high courts or the inferior, you have obtained an audience, lay as well as legal: solicitors waiting for their cases to come on—suits, witnesses, and jurors. Your ability is being recognised. Assume that you devil for a leading junior; you may get the reversion to much of his work, when he takes rank as K.C.—and quite legitimately. As to this, I have given a personal instance in another chapter.

So long as you are honest and loyal, and infringe no rule of Bar etiquette, there can be no reason why you should not use all your energy to get work—to sit day by day behind your desk, and wait for a fairy godmother to drop briefs down your chimney, seems the height and depth of folly.

You will require a good deal of patience. Have patience, and briefs will come. If you cannot stand the racket of delay it will be a pity. You may, of course, be lucky enough to go to the Bar under especially good auspices—you may have relatives, connections, friends, among solicitors, who will help

and push you ; this will not avail if you lack merit, but be a great advantage if you have it. Again, it will be no use your crying at home that you can never get a brief ; you can have some, at least, without the asking. You should at once join the Central Criminal Court, and one of the London Sessions, another on the Circuit you have chosen, and you will there have the privilege of a brief now and then, in turn with others : "Soup," as you have heard it called—not much of a meal, but a welcome £1 3s. 6d. for a dinner.

This book is, however, intended for the Common Law side, but a little "crime" will do you no harm. A great many distinguished men, including the late Lord Chancellor, commenced their career in the Old Bailey.

I advise you to spend some time in the Mayor's Court ; you will find cases of importance tried there, before very capable judges—the Recorder, Sir Forest Fulton, and Sir F. A. Bosanquet, Common Serjeant.

I now offer you a few hints under the heading, "How to Conduct a Case," reminding you of the golden words of Emerson :—" *Skill to do comes of doing ; knowledge comes by eyes always open and working hands ; and there is no knowledge that is not power.*"

CHAPTER XXIV

HOW TO CONDUCT A CASE

MR. JUNIOR, your conduct of a case has been preceded by your first instruction to draw the Statement of Claim or of Defence. It will be sufficient for me to treat you as simply the counsel for the plaintiff, with some few remarks as to defendant's counsel. You have a fair run, therefore, from writ to issue. Your pleadings may have been challenged, and you have had the pleasure of earning some few guineas in supporting them and in attending to the summonses, which introduce you first to a Master, and subsequently to a Judge, in Chambers. You have advised on the evidence necessary to support your client's case, and you are at last ready for trial. You have, therefore, had the opportunity of knowing more about the matter in dispute, and its merits or demerits, than even the solicitor who instructs you. If the case involves both law as well as fact, you have had ample time to master the precedents—there is no excuse for you, and you must be armed cap-à-pie when you rise to open your case.

The judge is in his place, the jury in theirs—the case is called on and you are on your legs; if it be your first case, you may have some trembling of the knees, but you are soon on your feet, and your courage, like that of "Bob Acres," is not oozing out of your finger tips.

Whether you be alone, or led, you first have to open the pleadings. This should be done in the briefest possible manner—it is a mere formality. If you have a leader, he will be wild if you do otherwise. You proceed to open your

case—your business is to possess the jury with the facts, and in the simplest possible way. Your statement will take the narrative form, supported by reference to documents and correspondence, of which you will have seen that the judge has a copy. If the correspondence has been admitted you have no difficulty—but it may be, your copy contains letters the admissibility of which may be doubtful. Your opponent will probably content himself with a comment, as to some of the correspondence not being admissible, but the judge can be trusted—he will reject from his judicial mind all that is inadmissible. You must, however, open nothing which is not strictly evidence. You must fight fairly, and not by indirect means seek an advantage to which you are not entitled. When once you gain the character, which you should covet, of being a loyal opponent, you will inspire a confidence which will be of immense value to you.

In regard to your papers, you must be very methodical ; everything should be at your finger tips, ready for production at the moment—if your papers get confused, you will soon be in a muddle. You will put your story to the jury in an interesting fashion ; sometimes it may be a dull one—lighten it by your well-chosen words and grace of style ; try to be convincing, and always be curt, so far as circumstances permit. If you believe your case to be a good one, your own conviction will win you half the battle. Do not, however, overrate the merits of your claim ; it is no use telling your jury the case is an undefended one—they see that Mr. Lambe, the well-known K.C., is against you.

Modesty is your best policy—it is often wise to *reculer pour mieux sauter*. The judge is sure to give you a lift if he can. Always be clear and lucid and take everything chronologically.—Then you will call your evidence ; there is cross-examination, and re-examination, with which I deal separately. Your adversary opens *his* case, supports it by testimony. You cross-examine. You may have to treat some of his witnesses with asperity—even severity ; whip them, if you believe them to be mendacious, but remember it is always dangerous to suggest to such witnesses that they *are*

perjurers. Such tactics may affect the jury-mind adversely. Counsel for defendant sums up his case ; he is crafty—he knows how to bolster up the stray feathers ; he minimises all your good points, magnifies his own ; he is clever, ingenious, and makes a grand splash—to you he seems unfair and unscrupulous. You must watch him closely, but do not interrupt him, if you can avoid it—interruption is always irritating and bad form, and, unless imperative, unwarrantable—especially during cross-examination.

At last comes your display of rhetoric, the crucial test of ability. You have now to address the jury in reply. I can give you no set rule—cases differ—but naturally you must point out the weak parts in your opponent's armour—knock out the rivets and expose the flaws ; you must get rid of his allegations and insinuations—if he is open to attack, attack fearlessly, point out the discrepancies in his evidence, test it by the law of probabilities, be facetious at his expense, if necessary—gay and witty if you can, make light of his witnesses, and be pathetic if the case has been one of personal injury.

Do not labour your points—be concise, and never weary your jury.

There is one thing you may safely do—*leave the jury something to find out!* Your client growls at your omission, it seems a point manifestly to your client's advantage ;—you know it is self-evident, and that the jury *must* see it—they do, and pride themselves on their perspicuity ; they think it is your unfortunate omission—they work it, and it turns the scale in your favour.

Always remember, you have been addressing the judge as well as the jury, and that as *he* has his word to say, you may find yourself in for castigation if you have deserved it, or your opponent may if he so deserves. If you have kept your horses in hand, have had a clean run, shown yourself an honourable opponent, distinguished yourself by good-humour, good-nature, and good sense ; if your invective has been well warranted, if you have been bold without bravado, and self-reliant without arrogance, you will have earned—what will be of inestimable value to you—*the goodwill of the judge.*

I will assume you have learnt the art of fathoming the jury-mind, so far as intelligence, keen observation, and some knowledge of character may have helped you, but you require even more subtlety, more penetration, more acumen, to be able to understand your judge, and know how to treat him.

How to manage a judge is an art.

In early practice you will not personally know your judge, later on you may have made his acquaintance, while at the Bar. He will probably seem to you altogether formidable, and so he is! He represents the Majesty of the Law. He is Justice holding the scales. He is even called Mr. Justice. He is entitled to your highest respect, but you must not overdo it. Nothing is more likely to annoy a judge than fulsome adulation, especially when you are addressing a jury. It is better not to refer to the judge, unless it be necessary. You may flatter by inference, make compliment by innuendo ; if you can do that—you have done well. You may refer to “the cold neutrality of an impartial judge,” but to tell the jury that his lordship is impartial is to offend.

These are mere hints. You can set yourself many problems and work them out. Your great aim will be to get on good terms with the judge—you may chafe at your slow progress. Remember, he does not know you—he has only seen you a few times ; probably he looks up your name in the Law List—Ah! called Easter, 1908!—he may look to see whether you have distinguished yourself as a student—taken honours. You have only opened the first page of your book to him, but he is beginning to read you. There must be many pages scanned, before he can gauge your quality. In all probability he will see you are a beginner, and be extra courteous, kind, and indulgent ; and if you make mistakes—which you will do—he will assist you ; be wary, however, of assistance from your friend. The judge has to weigh you with a very nice balance. He has to learn, in the first instance, whether you are a gentleman, not of mere gentility, but honest, frank, and fair. He will soon see whether you have the making of a successful advocate in you ; he has much to know before he can show that

he has confidence in you ; but be sure it will be pleasant to him when you have gained that confidence.

Your experience will soon ripen. As time rolls on you will deal with the judges whom you have known as men at the Bar. You will, by the intimacy of the Circuit mess, have learned that they are mortal, with the same weaknesses and frivolities you yourself possess. You have learned their mode and metal as their junior. When your leader is elevated to the Bench you are on terms with him at once. In course of time you will be dealing not with one judge, but sixteen, and two more, if you frequent the Admiralty, Probate, and Divorce Courts. All these you will have to study—what a noble study !

Learn, then, to know your judge, as well as your jury. Each judge may have a different idiosyncrasy. Some counsel never get on before certain judges. You must get on well with all of them.

You must not expect judges to be always in good temper, you will frequently find to the contrary ; make allowances for them : they are severely tried. Fancy having to listen to counsels' speeches all day long, and sometimes such speeches, and such counsel—weary, flat, and unprofitable drippings, from the mouths of men who think themselves, in their vanity, orators—but who are mere feeble frothers. When they are disposed of, note how soon the judge's smile comes back, when he finds rational men confronting him. You will soon find that in a particular case one judge will suit you better than another. "Who's our judge?" says your leader at conference ; you have the evening list. "Old Sibley !" you very rudely say. "What, dear old Sibley !" your leader returns ; "just suit us—glad it isn't Soper !" Next day, by the irony of fate, Sibley's list runs through quickly, and you are transferred to Soper.

I am assuming that you are working single-handed ; you have thoroughly digested how you are going to put the case to suit Sibley. He is one of the most tender-hearted and sensitive of judges ; you will, in appealing to the sympathies of the jury, appeal to his ; but Soper!—there must be an

immediate *volte face*—no sentiment for him ; you'll be kept within the four corners of common sense ; a little roughness will not displease *him* ; your manner, style, demeanour, must be altered. You must be a "quick-change" artist ; you are engaged in "a hocus-pocus science."

Your case, say, is one of breach of promise—you are happily before a judge to whom it gives play for a flow of his wit and humour, you, the opportunity of displaying yours—but another judge is one who thinks this cause of action should be abolished ; you will get no sympathy from him,—another will laugh you out of court, and spoil your damages if he possibly can.—Your case is, say, of a sordid nature, your judge one to whom it is a treat to study the seamy side—you can indulge him with harrowing details—another judge is unsympathetic, such details paraded, disgust him. Again remember, while addressing the jury you are addressing the judge. A Nonconformist quarrel comes before a judge who is a rigid Episcopalian—it will not affect him—a dispute in which there is strong political and party feeling is heard by a judge who did not leave his political proclivities behind him when he attained the Bench. You will fear political bias will sway him ; it will do nothing of the kind, he is too just, but for your purpose a judge who has never been in the House might have suited you better. You are in a case which happens not to be in the Commercial Court, but purely a commercial case. You are to try before a judge who knows all about bills of lading, bills of sale, demurrage, &c., and who has nothing to learn—Presto !—a change, and you are before a judge who knows but little of mercantile matters, and to whom you have everything to teach, but in such an artful way as to disguise his ignorance from the jury.

You have to adapt yourself to the "ringing grooves of change." Do all this, and if you do it well, and *outlive* it, you may reach the Bench.

My remarks must not be taken in the slightest degree as disrespectful to the Bench—our judges never allow their private feelings to interfere with the justice they have to administer.

I will assume that by integrity and fair dealing you have

earned the confidence of the judges—it is of equally vital importance to obtain the confidence of your leader. He is, if a man at the front, overwhelmed by his work, harassed by the clash of his cases; he cannot be in two places at once, he is almost ubiquitous, but not quite. What a relief to him, to know his junior is a safe man, and one on whom he can rely; if he cannot, he raids in and out and spoils the case by taking up threads which he often tangles. You cannot earn the confidence of your leader, unless you have mastered your case, and know how to conduct it—then he can safely leave you. Your responsibility is great, but though there are risks, the reward, if you succeed, is worth having; if you fail you may lose your client; not necessarily, if he be a man of judgment—you have fought well, and he knows it. But “never say fail”! A timid junior is happy when he knows his leader will not desert him, a bold junior happier when he has been deserted. *That is his opportunity.* The leader who is satisfied, is almost sure to do you a good turn. When retained before counsel has drawn the pleadings, he may suggest that you, Hilary, should be the junior—“a safe fellow, Hilary”! You will find new clients brief you if you become the favourite of a particular leader. I have seen juniors quite “familiar” in that way—Sir Henry James would always have Talfourd Salter, Serjeant Parry, Sam Joyce, and it is much the same nowadays.

How are you to gain this confidence? You have perfectly mastered the facts presented to you, you have scaled them to see if there are any light weights, you have dovetailed them to see how the pieces fit, you have seen where it is desirable to discard, where it is necessary to strengthen, how discrepancies can be reconciled,—have considered the probabilities as against the improbabilities. For the moment you cease to be your client’s counsel—you put yourself in the opposite place, and work the case out, just as if you were on the other side. Your client has indicated as best he can (if for the plaintiff) the evidence to be called for the defendant, but for the moment you are for the defendant—you see the strong points you could make for *him*, and that it is not a

mere walk-over. You have learned that there are two sides to a question. You are thus armed for the fray, whether you have a leader or not. But the dispute may be one of law as well as fact. At it again, hammer and tongs—over to the Library if your own is limited. “Give me this, Ling—give me that,” until you have a whole table of books before you—grind, grind, grind. This means hard work, my friend, early risings and night vigils; no wonder that barristers are so virtuous, they have no time to be otherwise. Well, you have your brief carefully noted up—notes of your evidence, notes of your law prepared and written out legibly.

At last you are in conference. After banalities the first question put to you may be, “Well, Hilary, how about the law?” A pretty fool you will look if you can only say, “Oh, that’s all right!” I recollect in the only conference I think I ever had with Sir Henry James that distinguished man asked me, “Well, Crispe, how about the law?” Happily I had an array of authorities. Serjeant Ballantine used to say in his drawly way, “*I always leave the law-ar to my learned juni-ar.*”

Well, your leader has put you the question. What a dunce you will seem if you have to rely on the mere superficial knowledge you possess! You are all right, perhaps, as to an ordinary running-down case, but how about riparian rights, foreshore disputes, rights-of-way, &c.?

So it is always necessary to *look up the law*. Your law must be up-to-date, to the last number of the various Law Reports. The study is simpler than it was. The numerous digests, the classification of cases, render it easier, and the student and young practitioner are materially helped.

And now about the solicitor—you have to *manage him*. How are you to treat him? He is your bread and butter—your Alpha, your Omega. He can make or mar you. He is a gentleman by Act of Parliament, almost always a gentleman apart from statute, but there *are* grades. Mr. Justice Wills, who was a great stickler for etiquette, thought it a breach of decorum for a counsel to shake hands with a solicitor in open court. I recollect seeing a solicitor extend

his hand to congratulate a young barrister who had just won a case for him. The judge looked as if he would have struck him off the Rolls, and certainly if the assault on counsel had not been perforce, would when the hand was taken, have had him up before his Benchers.

You will, however, in your early career meet necessarily not a few shady limbs of the law. So long as their cases are not obviously queer, and you keep such men within bounds, you can use them as stepping-stones; they have a right to your services, but the sooner you weed your chambers of them the better. Look after your fees and your reputation.

As a class, solicitors are not only an honourable but very able body of men—educated and intellectual, but do not give scope for the ill-natured sallies of your *confrères*—empty-headed little tin kings—about “nursing solicitors.” You have a right to cultivate—but it would be unwise to walk about the corridors arm-in-arm with your client, in the same way as it would be high treason for a K.C. to carry his brief under his arm from court to court. There can be no impropriety in making a friend of your client; there is not much difference in your social status. On your call you have the right to put “Esquire” upon your wig-box—Messrs. Ede and Ravenscroft will have done that for you without your leave—and then your wife, if you are a Benedict, will take precedence of his wife in society. *Voilà tout*. Remember he is your Mæcenæ! Some great firms look with pride on the judges they have made—or helped to make.

Now as to your dealings with solicitors—etiquette *qua* interest. Your honourable sense of what is due to your *confrères* will prevent you from committing the outrage of soliciting a brief. You must never covet the loaf meant for another man’s table, although he may have plenty of bread and butter in the larder, and you none. This looks like restraint of trade. It is! *The Bar is the closest Trade Union in the world*—if you do not like its rules, do not join it. Some do, and break them, but *Free-lances* seldom succeed.

Then, again, in your dealings with solicitors’ clerks you

must be circumspect. The "Solor's" clerk brings you your briefs—he brings you the welcome cheques, big and small ; in a sense he is the conduit pipe through which your business flows. Beware ! As a rule, let your clerk see him. Some solicitors' clerks have to a certain extent the distribution of briefs—hints may reach you of "a douceur" wanted ; disregard them, and if pressed, let your clerk show your tempter the door—you may lose business, but let it be so.

I have referred to the integrity of the Bench—I claim the same quality for the Bar. To be bribed or to bribe is repulsive to the sense of honour of a great profession.

I have heard that in some of our island possessions bribery, political and otherwise, is rampant. An old friend of mine, Yelverton, who was Chief Justice of the Bahamas, gave me a vivid picture of the corruption existing in those islands. After a judgment of his he had to make tracks and resign his judgeship. His name reminds me of a coincidence that *temp.* Edward IV. there were two Justices, one Yelverton and the other Bigham, and in the late Queen's reign (and now living) Justice Bigham and ex-Justice Yelverton.

The Bar rules help to maintain the high standard of the profession. But etiquette must have its own place, and I return to your conduct of a case, involving as it does a thorough knowledge of the Art of Examination, with which I deal in the next chapter.

CHAPTER XXV

THE ART OF EXAMINATION

I DEVOTE this chapter to the consideration of the "Art of Examination" in its three phases: examination-in-chief, re-examination, and cross-examination. I address myself to men of aptitude. To attempt to teach music to a man who has no capacity—to whom one note is much the same as another—or painting to a man who is colour-blind, would be folly. You may be "cram full" of Roman law, a bookcase of legal lore, in fact a thorough lawyer, and yet fail in the art, without which no advocate can succeed; but with intelligence and industry and some experience, which will grow with your years, there is no reason why you should fail.

The young counsel in his early days may think that examination-in-chief is simple. Any fool can examine a witness!—Can he? You will soon find that you have tumbled into one of the pitfalls attendant upon that easy task. Your brief delivered—I give you the credit for having read it, and that you have mastered the facts—you have carefully perused the proofs of the evidence your witnesses are to give; you seem to have before you the simplest possible task. The solicitor has done the work for you. The plaintiff, or the defendant, as the case may be, tells his own story, usually in the third person, and in narrative form. The witnesses in corroboration follow suit. All the counsel has to do will be to put his questions in such form as to elicit the answers he desires. Not so easy as it looks. In court you will not have it all your own way. There is the learned Mentor on

the law of evidence to control you. You must not lead, although you may assist the memory of your witnesses by fair and well-recognised means. I will assume, however, that you have formulated the questions in your own mind, and perhaps when your clerk has been out have had a little examination to yourself, just a little practice to air your voice—excellent—but not enough.

The story told by the plaintiff seems simple, consecutive, and apparently convincing, but before you venture to put questions you must try your proof, and remember that there are witnesses who do not come up to their proofs—your early experience will have taught you that proofs are not always reliable, the statements in them must not be taken for granted, you must be cautious, and on occasion suspicious. I have often had to complain to clients of the manner in which proofs have been taken, though more frequently to compliment them.

The solicitor, not unnaturally, desires to put the best case he can before his counsel. He wishes to inspire him with confidence—he will work better if he *believes* the story he is instructed to tell. It may be true, but told in a way that makes it appear too good to be true. Facts may be marshalled in such a manner as to look like fictions. A solicitor should never leave to a clerk, unless he is a skilful hand, the duty of taking a proof. It is a most responsible duty. Frequently the witness tells his own tale, and the clerk writes it down; there he leaves it, and in such form it goes to counsel. The clerk is quite happy. No one can say that *he* has suggested in that proof a word to the witness, nothing could be fairer, or wiser—apparently. I am not suggesting a case where the evidence is not honest—honest cases are not all won, and you have to *win* cases. The duty of the clerk is clear, viz., to cross-examine his witness on all points. Over a table this can be easily done, and he may elicit much which from carelessness the witness has withheld, or in some cases designedly kept back. He may be able to strengthen weak points, and render clear that which appears to be doubtful. A proof thus taken will

probably turn out much more valuable than a bald one. It will disclose possible difficulties which may have to be met in court, render the witness better enabled to stand the cross-examination which may be sprung upon him, and also give him confidence—he has had his first experience in cross-questioning.

Then perhaps the clerk, where there is a sequence of witnesses to prove the same circumstance, takes the proof of one and reads it to the others for their adoption. They adopt it, and he is glad to find that he has his witnesses in accord. But accord has its dangers—it sometimes looks like pre-arrangement. Proofs, as a rule, are marvellously well taken by solicitors, the exceptions you will have to deal with. Many firms have very little litigious business, and the whole work is left to a clerk, perhaps called the Common Law clerk, who has had but little experience. However, the imperfect brief is delivered, and whether it is imperfect or not *you* become responsible—remember *that*, and be careful. The time may come when you will be too busy to read your instructions, and content yourself with getting your facts from the evidence which follows. That evidence you must analyse. You must consider how it dovetails—account for the curious accord which appears to exist, and be prepared to reconcile variances. Above all, I again say—you *must* consider the probabilities. Some classes of case afford a series of repeats, and if you have any experience outside your profession, you will almost know what has happened in the natural course of events. After this dissection you still may not be satisfied, and may desire your clerk to appoint a conference with your client, suggesting your lay client being present, and perhaps some of your witnesses.

Here you will be faced by a Bar difficulty—one of decorum rather than etiquette; which will fence you in with barbed wire from the moment of your call. It is considered somewhat bad form to interview your witnesses except in criminal cases and in the case of experts, such as accountants, engineers, surveyors, and scientists, but without shame I confess I have done so frequently, and have had the example of some

eminent men to shield me. At the consultation you will soon find how the proofs have been prepared, and will elect to cross-question your own witness (or witnesses). It is not an easy task ; it is a delicate one. If there be weakness, you can scarcely suggest the way in which it can be remedied ; you clearly cannot ask the witness to add to or vary his evidence. You can scarcely suggest that your client has taken the proof badly—you must finesse, and with tact not let the witness see that you are, by your apparently harmless questions, thoroughly plumbing him. The man may be honest, and you must not frighten him, and if your client he may cease to have confidence in you.

I recollect a case in point—a conference at Mr. John Day's chambers (Mr. Justice Day)—an action for libel against the proprietor of a newspaper, a mighty man in his way. The defendant attended, Day examined him very closely, with the result that the magnate took offence, and expressed his opinion that Mr. Day ought to have been retained on the other side, and desired him to return his brief. Day immediately expressed his willingness, although there was no obligation. However, happily better counsels prevailed, and after an expression of regret from the irate client, Day consented to retain the brief, and won the case. He had got out much valuable information, and indirectly had put the defendant on his guard.

Well ! you are ready—you know the case so well that you will scarcely need to refer to your brief while you are examining. That is excellent—to examine without continually referring to your papers is always effective. The time arrives when, in your very white wig and glossy bombasine, the case is called—and you are on. Your leader, who has only seen you once in his life—at consultation—looks at you doubtfully and does most of the work. At last he entrusts you with a witness. You call her. She is to prove that on such and such a day, and at such a time, in such and such a place, she saw the defendant with another man. What could be simpler than the examination-in-chief of such a witness ? No chance of objection on the ground of

inadmissibility. Your brief has told you "that Mary Carver is a laundress, that she lives at 490, High Street, Marylebone, that on November 7th, in Cross Keys Street, she saw a man whom she now knows to be Mr. Smith, the defendant, in conversation with another man, whose name she believes to be Jones, and that it was nearly ten o'clock"—one would think you could scarcely go astray; but you do—you fall into the first trap.

You commence with easy nonchalance, having first attempted to begin—*before* the witness was sworn.

"Mary Carver, my Lord."

The judge takes a careful note. "I believe your name is Mary Carver?"

"Yes, sir!"

"And you live at 490, High Street, Marylebone."

"Yes, sir!"

"And I fancy you are a laundress?"

"Yes, sir!"

A warning "Ahem!" from your opponent cautions you not to lead. But you are getting on swimmingly, and can be a little familiar.

"Now, tell me, Mary, on Tuesday, November 7th, at about 10 o'clock——"

"I *protest*, my Lord," says Bilberry, the defendant's counsel, rising. "My learned friend knows perfectly well that the point is a crucial one."

The judge eyes you, and seeing you are a fledgling, kindly says, "Mr. Hilary, we are not allowed in these courts to reach the truth by a short cut; you must not lead."

You mumble "No, my Lord," and annihilating Bilberry with a withering smile, you try again, you even get a sympathetic glance from a jurymen who thinks you hardly dealt by. You have really done no harm, and with returning courage and greater care you elicit the evidence—interrupted only by a "Pish!" and "Pshaw!" from Bilberry, who clearly does not like it. You elicit all you want, but instead of sitting down, the devil—your patron saint at your elbow—tempts you to travel out of your proof and try to refine pure gold.

"Now, one other question, Miss Carver. How do you fix November the 7th as the date?"

Clearly a question Bilberry would have to put, but not for you. The witness, a very good-looking young woman, to your surprise, does not answer. She casts down her head, and then looks at some one in the gallery of the court, which is packed.

"Who are you looking at?" interrupts Bilberry.

"*Mr. Bilberry!*" says the judge reprovingly.

Then, with some asperity, you continue, "I really must trouble you to answer my question, Miss Carver!"

Bilberry jumps up. "I'll trouble my friend not to cross-examine his own witness."

The girl puts her handkerchief to her face and begins to cry. You in distress say, "I'll not trouble you any further."

"Neither will *I, Miss Mary Carver,*" says Bilberry, sneering out her name, with a knowing look at the jury—"you may leave the box."

Your leader, Mr. Gansky, K.C., is, metaphorically, tearing his hair—he does scratch his wig. Wisely, Bilberry has refrained from cross-examination. All he could have elicited would have been that Mary was out on that night with her young man, that her mother supposed her to be at Wednesday Chapel, and that the man in the gallery was her sweetheart, Joe!—Bilberry, of course, calls the two men, who swear that so far from being in Cross Keys Street on the night in question, they, at ten o'clock, were having a friendly glass at the "Blue Boar," at Hackney.

Not only have you lost your client's case, but possibly your client, and certainly your fees if they have not been paid.

Take it as a golden rule—let well alone, and *never take a leap in the dark, unless compelled by dire stress.*

Always remember, that you must not reduce your examination to mere catechism—it fatigues a jury to have things put too prosaically. There are sure to be lights and shades, of which you can avail yourself, to lighten up a case. When your witness seems in distress—a woman who, perhaps, has lost her husband, or her child, in an accident—your own voice should have a sympathetic ring—a

consoling "There! there!" goes a long way with a jury. When your witness is lively, adapt yourself to his humour. Get *en rapport* with him if you can, sink if you do not mind to his level—you must never be Mr. Hilary, of Crown Office Row, to him.

I once had a junior in a case, where it was essential to enlist the sympathy of the jury. The plaintiff was a woman, and my friend called her. Every question he put was in a hard, set manner—he examined like an automaton—the points which were to move the jury, he hurried—immaterial matters he dealt with at leisure—he did not understand that to elicit sympathy you must be sympathetic. He got an unfortunate laugh from the witness, which the counsel for the defendant made much of when his turn came. I tried to assist and check him, which he took in no friendly spirit. "I know what I am about," he said. So did I! He was about to spoil my case; and *he did*; and with the almost certainty of getting a hundred or two—we got ten, with nominal costs. What business he had very soon dwindled.

A few more hints—take stock of your witness; you have probably not seen him or her until in the witness-box. Some are shy and diffident—they want leading adroitly; others forward, and over-confident—they want checking without the appearance of the curb; some are reticent—encourage them; some are impudent—keep them in order; some are waggish—beware. A young counsel, seeing his witness sworn on the Old Testament, and that two of the jurymen had been sworn with their hats on, thought to curry favour with them. He asked the witness, "Now just tell me, what is your religion?" The man, whose nose was according to Moses, answered, "*Vell, I've tode you by dabe is Isaac Nathan—that I lives in Houndsditch—and deals in sponges—and you asks me vot my religion is—vell, put me down a Ke-va-ker!*"

Some witnesses are too truthful. You may say, "How can that be possible?" The witness may be over-conscientious—a difficult man to deal with. He has made a perfectly true statement, but he wishes to be absolutely fair; he thinks he

has conveyed more than he intended ; he qualifies, or supplements, and destroys the value of his testimony—for the moment he is off the line, you must get him on again. I am speaking here of a really trustworthy witness.

Then there is the witness who wants to help you, or your client. His evidence has been veracious enough, but he volunteers something to strengthen it, something which you surmise is untrue or exaggerated. Your opponent is watching like a lynx. You must pare down the exaggeration before your witness gets into his hands. Some witnesses are absolutely stupid ; you must brighten up their intellects if you can—sometimes such denseness arises from the form in which you have put your question. Re-frame it. Do not always think that the witness is wrong because you do not get your answer in the form you desire.

Parenthetically, I give you credit for some knowledge of the law of evidence. Buy the best text-books—you can in any event obtain a superficial knowledge, but to the day of your death you will scarcely have mastered the subject. You have really no code to guide you, and your experience will teach you that a large number of appeals arise from the rejection or wrong admission of evidence.

Then there are witnesses who give you unexpected answers, seemingly inconsequential, and yet there may be something in them. Do not let your opponent see you are flurried. It may be the witness has been trying to gauge your mind ; it may be you have conveyed imperfectly what was in it, and you possibly have not gauged what is in his. You have the gift of intelligence—rapidity is one of its sisters. You must be quick ; you have to face a disconcerting answer without appearing to be disconcerted—you have to take your course at once. Your leader will not help you, unless in dire urgency. Leaders wisely avoid interfering with their juniors—such interference may confuse them, besides giving too much weight to whatever the difficulty may be. I have, however, seen a leader take the examination of a witness out of the junior's hands—I have done so myself. Poor junior ! But that course is only of extreme necessity.

You will find many other varieties of witnesses. I will only give one other, and he is a plague—the would-be witty witness. He is often saucy; he enters the box and is sworn, he smacks the Book with his lips as if he liked it. A broad smile illumines his face, as if he thought the ceremony a farce—as he answers your first question, usually what his name is, putting in leading form “Your name is John Smith?” he answers in the affirmative, but his face reflects that he thinks it a most humorous question. Now it is clear you cannot reprove him, you dare not blame him for levity. But why does he laugh? Your mind works now at earth rotation velocity, and you arrive at an instantaneous conclusion. You have told the man his name is John Smith, and knowing *that*, and that he has been sworn in that name, he looks upon you as a duffer in putting a question to which the answer is palpable.

You banter him a bit—say, no doubt the question seems to him a funny one, and you take him into your confidence and tell him the gentleman up there (the judge) would like to write down his name and his address, and the gentlemen over there (the jury) would like to make his acquaintance; ten to one you get on splendidly after this; and see what you have done further—you have earned at least ten lines in next day’s press with no less than three “laughters” bracketed. Why, you are getting quite a wit!—a cheap one truly, but you must have a beginning.

I recollect a case in which I came to grief. A County Court action, to recover damages for fraudulent representation, as to a horse, which my man, the defendant, had sold to the plaintiff for £50. In a severe cross-examination he admitted he had bought it for £8 10s. at Barnet fair—this looked fatal, but I assumed that at the time it was a rough, untrained colt. To try and pull the witness back I said, in re-examination, “You told us you gave £8 10s. for the horse. Was it a green horse?” “No, sir!” he answered, with a leer, “*it were a bay!*” Of course, there were shouts of derision at my expense—in fact, my horse chaunter knew he had lost his case, so he thought he would have a joke

out of it. Never lose your temper; if the laugh is against you join in it.

To examine well in chief is the first qualification to inspire your leader with confidence. Examination-in-chief is, therefore, an art in which no counsel can excel, unless he has a fair knowledge of character, the varied phases of human nature, and an adroitness in dealing with the same. This remark applies much more strongly to cross-examination, as to which I give place to re-examination as completing your duty.

This duty, unless you are working single-handed, which you more often will do in your early stage, will seldom fall to you; the leader as a rule re-examines; it is for him to make all things clear which are obscure, to sweep up doubts, and to bring the witness back to the good graces of the jury which he enjoyed prior to his cross-examination. If you have a character for ability, and are of some standing, your leader will occasionally allow you to re-examine your own witness in *Nisi Prius* cases—almost invariably in cases at the Sheriffs' Courts, involving inquiries arising out of the compulsory purchase of property under the statutory powers of Railway, School Boards, and other bodies, and under the Lands Clauses Consolidation Acts and in Arbitrations, where reference to an arbitrator has been agreed upon. The junior, in such cases, has often, by a previous professional career, a better knowledge than his leader of the way to examine and cross-examine what are called scientific witnesses. There have been, and are, many leaders who have had that advantage—among whom prominently Sir Edward Boyle, Bart., who for many years enjoyed the most lucrative practice in this branch.

In re-examination you must exercise the same care as in examination-in-chief. Never trouble to re-examine upon a weak or apparently immaterial point; if you do you never know where you may find yourself, "*Cold-pausing Caution's lesson scorning.*" Remember always that in re-examination you have no right to put leading questions.

So much for re-examination.

CHAPTER XXVI

CROSS-EXAMINATION

I HAVE proved examination-in-chief by no means easy ; cross-examination taxes to a much greater degree the powers of an advocate. In examination-in-chief the counsel knows the evidence he is going to call ; in cross-examination he is comparatively ignorant of the evidence to be tendered. Interrogatories, admissions, correspondence, may teach him something, but he must always expect surprise witnesses. An advocate ranks high who is known as a master of cross-examination. You will make up your mind to so rank. But how to attain the position ? You may be a powerful speaker ; know how to move a jury—both useful ; in many instances there may be no necessity for the exercise of this power ; in such case your eloquence will help you. I am referring not to mere trumpety cases, but to important ones. In such, how triumphantly your opponent will drive in the fact that you have not shaken his evidence !

Can you acquire the art ? I doubt it. Like wit, it cannot be taught ; but you may make a very good imitation of it. A pot-boiler is better than nothing, and a good replica sometimes approaches an original. The only school you can go to is that of experience. You may become good, if not great. At the present day there is no lack of brilliant cross-examiners ; never lose an opportunity of hearing them. Perhaps, my dear friend, you are too proud to imitate. Well, if so, you will not bag apples ; but I do not ask you for servile imitation—surely you may have your model, as the painter or the actor has.

What do these advocates possess ? what has placed them on

the pinnacle? You cannot have what they have all at once, because there are so many other arts to be acquired. You must have time, practice, experience.

Note a few essentials—I repeat myself as to some referred to in examination-in-chief. You must possess aptitude—you must be natural, and have a thorough knowledge of the world—the “world’s your oyster”; but few know how to open the bivalve! You have to get beneath the shell. You must understand mankind, your “proper study”—the ins and outs of human nature, its passions, frailties, follies, motives. Unless you can dive beneath the surface, find your honey in the cells of a man’s mind, think what he thinks, place yourself in his place, consider what under similar circumstances you would yourself have done—unless you get at the introspect—where are you?

Look at the works of fiction, novels, which in their thousands cumber annually the shelves of their publishers. Some authors have no idea of introspect, of idiosyncrasy; of course, there are happily many exceptions. The man’s your book—you must read him. How can you attack the mental effort by which a man conceals his thoughts except by rare intelligence? You must know the world in which your witness lives—at one moment he is in the drawing-room, at another in the garret, or the gutter.

Every phase of life is open for your skill. Almost every witness will present a different canvas on which to paint a portrait for the jury. You must know how to dissect, how to cut him up and make mincemeat of him. He shuts himself up in a fortress of deceit—by strategy, not trick, you must find an entrance into the citadel. You must learn the clue to the intricacies of the maze; you must be a judge of motives; you must on occasion ascend or descend to the calibre of the man you cross-examine. With one man you will play a game of chess; you make your moves cautiously; you are wary of your adversary, and when you checkmate it is a triumph. It has been a game of minds. With another you will play a game of bowls.

Many witnesses have no intention of committing perjury—

they are swayed by bias or prejudice. Counsel must always look out for such incentives, and by pleasant handling the truth may be elicited.

Then there are lower attributes. You must know how to wheedle, to coax, to cajole. You get on terms with your witness; he begins to think you a pleasant fellow, much nicer than the young jockey who examined him and rather put his back up. Good-humoured banter helps, he gets confidential, and you make him your witness—*that* is success. The solicitor on the other side says, "I'll have that man next time."

You must, of course, be courageous, bold, but never bully. The words repeated, "Now, on your oath, sir," are bad form and not effective. If the witness be a liar he will care very little for the value of an oath, and you fail to frighten him; if he be a witness of truth you may offend the jury.

You may have to be severe—even cruel, but never fall within the reproach of the judge who said to an offender, "You seem to think, sir, that the art of cross-examination is to examine crossly." To be harsh, especially to women, is repugnant to you; but you cannot avoid it. It will be the most painful of your functions. I have heard poor Lawson Walton—once Attorney-General, a most tender and chivalrous gentleman—put women of youth, beauty, and birth through the most terrible ordeals. To the outsider it might seem heartless, but it was necessary and just. It is, however, a pleasure in our profession to feel that as a rule its members are influenced by a refined sense of honour, and are not likely to abuse the use of the weapons at their disposal.

Unfortunately, as in every profession, at the "Sign of the Lamb" there are to be found black sheep who will "baa" to the will of their shepherd with the crook—the pettifogger. Such counsel will put *any* questions they are instructed to ask. You will do nothing of the kind, if the questions offend against decorum, decency, and good feeling. I always made it a rule to refuse to ask questions affecting morality, where the issue was a trade one, and even if it seemed remotely material, I declined unless I was satisfied there was warrant.

I always refused to rip up a man's life unless there was some reasonable proof that his misdeeds had been continuous. In early professional life I weeded out a good many of my clients by this course.

I was in a case before Mr. Justice Mellor at the old courts at Westminster, and tendered a woman as a witness who at the time was leading a perfectly reputable life; she was married and had a family, whether she was previously virtuous or otherwise was quite immaterial. One of the black sheep put questions as to her early life and certain escapades of which her husband, who was in court, probably knew nothing—absolutely immaterial, but they “went to character” with the view of inducing the jury to conclude that an immoral person is not to be believed on oath. I made a savage attack on my learned friend, and told the jury there were men in those courts who were known to have been immoral—and one especially a man of gallantry—but whose words might be taken without the sanctity of an oath. The learned judge agreed with me, told the jurymen that frailty was no “indicia” of falsehood, and directed the jury to disregard the answers.—But the poor wife!

There can be no objection if the matters examined to are germane to the issue; and if you are convinced the witness is a bad lot—spare him not. He may perhaps have shown himself vindictive and regardless of the feelings of others—he deserves no consideration. Get back to the old crop before the long period of fallow. When you are righteously indignant, put but little curb on your indignation.

In cross-examination never forget this: that by meandering away from the field of investigation you may frequently strike oil; the witness's mind is running in a groove—questions put to him, which appear irrelevant, for a moment clog the groove. You have, we will say, examined on a certain point—you leave it; the witness is relieved; he expected you would press him further. You have your scamper, and then return to the quarry, to the surprise and possible confusion of the witness.

2. You will not, of course, draw upon your imagination and

put questions as to matters of the existence of which you are ignorant, although you *may* indulge in hypothesis. In this respect I recollect a counsel who was a sad offender. I had a case at Cambridge before Lord Russell of Killowen where the issues arose out of a question of trespass to lands. I had not previously known my learned opponent, but I was warned that he did not run "straight," and, further, that on that part of the circuit he had great weight with a jury. He asked my client the most irrelevant questions—as to how long he had been tenant of a certain farm, whether he had paid his rent regularly, and gleaned that he had not always paid it on quarter-day. Pressed, the witness admitted he had been a quarter in arrear. Asked whether he had not removed his furniture before quarter-day, and part after nightfall—it was December—he answered "Yes." "Ah!" said the counsel, "*shooting the moon*, eh!" with a knowing look at the jury, eliciting a sympathetic laugh. As far as facts went, I easily proved the Christmas rent was paid a few days after it was due, but the counsel had laid his nest-egg of mischief, and I had some difficulty with the jury. I boldly asserted that all this was the creation of his own brain, and *dared him to produce his brief* to show a word of instruction to justify his innuendoes. That counsel nearly came to grief, but happily died young!

Let me advise you to be wary as to trapping a witness. It is neither fair, nor fit, that you should pit your intelligence unduly against his ignorance. I give an instance of a trap, not a very wicked one. Counsel says, in an easy manner, "I suppose you have talked the matter over with the other witnesses?" The witness may have given perfectly honest evidence; he is puzzled. "Talking the matter over" may look as if it were a put-up game. However, he answers "Yes!" or he answers "No!" It is perfectly immaterial. If he answers "Yes,"—counsel invites the jury to believe that the witnesses have been acting in concert—making things fit. If he answers "No,"—counsel convinces the jury of the extreme improbability that men meeting every day could avoid speaking of a matter of so much mutual interest and urges

that if the witness is to be disbelieved on one point he should not be credited on another.

Where there is reason for suspicion it is better to have witnesses out of court.

My remarks under the head of "Examination" have been mainly confined to witnesses in ordinary cases; but there is another class to which I desire, Mr. Junior, to draw your attention. I refer to experts—engineers, surveyors, accountants, medical practitioners, witnesses as to handwriting, *et genus hoc*. Such men are trained men, usually of education and culture, and unless you have had previous training, they manifestly have an advantage over you—knowledge, which you do not possess. You may be instructed in cases where such witnesses are called, and as almost invariably you will have a leader who is perfectly competent and who is unlikely to desert you, and whose business is principally confined to work of the class, you will with your intelligence pass muster. You will seldom have the opportunity of cross-examining, save in single-handed cases, though this may occur through the temporary absence of your senior.

If you can put your foot into the work which arises out of claims against Railway Companies, County Councils, School Boards, and Public Bodies which have obtained powers to take properties compulsorily, or better still, act for them, you may make a fortune—but goodbye to the sweet attractions of *Nisi Prius*, whether in town or country.

In educating yourself, observation is of much assistance—you will scarcely find the opportunity, save in the Sheriffs' Courts—to which, when any good claims are on, you may pay, when time permits, an occasional visit, but it is not ordinary open court work.

In examining the expert, always remember that it is you who are seeking information, and, further, that although your duty is to test his accuracy, you must never impugn his veracity; he will treat you with the utmost courtesy, and may give a lesson in good manners to a counsel who himself errs. He has often an elastic conscience, and you may be surprised to find how experts on the one side and experts on the other

differ so materially. In examination-in-chief, he will probably assist you and the other side by handing a copy of the report he has made, of which he has several on flimsy, which are at the service of the sheriff, or whoever presides, and the jury. The expert is much affected by bias—if he is for the claimant, he looks through the small end of the telescope and magnifies, if not—he minimises through the other end.

In cross-examining, you must never go beyond banter, unless you get a mere pretender. Bear in mind, the witness is not permitted, in giving his evidence as to value, to support it by evidence of other similar properties which have passed through his hands. You may put a question to him in cross-examination, which will admit in re-examination the evidence you for the moment carefully excluded—a grave error often perpetrated by novices at *Nisi Prius*.

I recollect a young counsel holding, I should fancy, his first brief—doing very nicely, and taking his objection to some clearly inadmissible evidence, and succeeding; he looked pleased; but unfortunately, in cross-examination, he put a fatal question, which rendered the evidence admissible. It was in vain that he in great distress protested the inadmissibility. “You have *made* it admissible,” said the judge; adding, I thought unkindly, “You have fallen into a pit of your own making.” Poor fellow! he probably lost his first client, and may never have found another.

Mr. Hawkins [Lord Brampton] enjoyed a very large practice in compensation cases—at one time he must have coined money. I was often as an expert examined by him, and when I was his witness I think he had confidence in me; at all events he went to a jury one day relying almost exclusively on my evidence. He got a £20,000 award. My fee was £150. The solicitor who instructed me retained me in similar cases after I became counsel. But this is a divergence.

Hawkins was a marvellous cross-examiner of experts. We were all more or less frightened of him. He was so full of mischief, and the way he would pretend not to know some important witness, whom he had probably examined scores of

times, was ludicrous. An anecdote in point: I recollect his cross-examination of Mr. Ryde, a very prominent man in his profession—"Ryde's Scale" was for many years the authority as to value. This gentleman was an admirable witness, up to every move, and had given evidence which Hawkins knew he could not shake. Mr. Ryde was of a very jolly appearance. He looked like a country gentleman, and in fact I heard he had a pleasure farm, at which he spent his spare moments. He was fond of hunting, shooting, and all field sports, so I understood, and I have but little doubt Hawkins had shot over his coverts. In the country he was the squire, in Town Mr. Ryde, the surveyor, but he did not affect the somewhat sober garb of his fraternity.

Hawkins commenced very much in this way:

"Well, Mr. Ryde, how are the turnips? Nice foxy morning! Cub-hunting good—eh?" and so on, in bantering style, without a question as to the evidence given. Of course we were all laughing—the jury did not know Mr. Ryde from Adam. Hawkins drew a vivid picture for them of the genial country gentleman, the good all-round old sportsman, shooting over the stubble, and angling in his own trout streams, and then pointed out the absurdity of calling a witness who *thought* himself a surveyor, to dispute the evidence of his Town men. It was not quite fair, but the jury accepted Hawkins as gospel.

My experience as counsel, having to examine my old friends, was interesting. I had been behind the curtain, and knew the tricks. They were very wary of me—I knew too much. I made one of them, who still holds a high position, very wroth. I fancy it was in a case for the Metropolitan Railway Company, in which I was instructed by Messrs. Baxter & Co., and the claim made was a most exaggerated one. The surveyor I refer to, Mr. —, led the other surveyors—the property some old houses, let to weekly tenants. I tested my friend as to deductions for repairs, rates and taxes, loss of rent, empties, and so on. I then applied his multiplier on the 5 per cent. table, and his figures came out all right. I did not press him at all, but I asked him whether he was

not frequently instructed to value properties, with the view to the purchase thereof. He answered in the affirmative. I next enquired whether, under his advice, such properties had been frequently purchased. He said, "Yes." "Now," I said, closing with him, "I ask you, on your word of honour as a gentleman, would you have advised any client of yours to purchase at the price you have given us?" His answer was honestly enough "No!" so we got the property at a much reduced price. He never quite forgave me.

In another railway case I scored over an eminent man. It was a small claim—the value of a business in a country town, and the interest in the lease of the premises. My clients were content with the evidence of local agents as to value. The Company, however, brought down a city magnate, who acted for them in their big cases. I knew him perfectly well. He was a tall and handsome man, somewhat arrogant in demeanour. The jury had viewed the property, which was out of repair. Waiting their return, I strolled round the town and saw my line immediately I saw my friend. He was introduced by the railway counsel with a flourish of trumpets. He was an Associate of the Society, of which he was President, and member of this, that, and the other, and had more experience than any other man in town or country. In cross-examination I not only adopted this, but made flattering allusion to the high standing of his firm. My clients looked as if they wondered what I was at. I then put a question very quietly. "By the by, Mr. —, I have had a run round the town and have not seen a single bill of yours anywhere." He looked scornfully at me and said, "It is not the custom of my firm, sir, to put up bills!" "But surely," I said, "on the large estates you manage throughout the country there must be small properties attached—you take the rough with the smooth?" He answered, "Yes, certainly!" "And you probably place such little properties in the hands of local agents?" He bowed assent. "And take their advice about price." "No doubt! No doubt!" "You have told us the place wants papering and painting." "Yes, yes!" impatiently. I dismissed him with a polite "Thank you."

I was enabled to ridicule the great man from London, brought down to tell the jury what was self-evident, viz., that the house was out of repair, and to give his idea of value, which in another case he himself would have sought from a local agent—from the very class of men whom we had called; and as the “magnifico,” disgusted at my mischief, was going away, I gave the Parthian shot:—“And he is leaving this room with a £50 cheque in his pocket, which the unfortunate shareholders will have to pay.” The jury pared down my claim by about a ten-pound note.

I must admit experts run very near the wind. As a rule they volunteer nothing, and never say more than is necessary. If an unwary counsel falls into a hole, there they let him lie.

I once had a heavy case, as to Metropolitan improvements, where the authorities had taken property under their powers. I took two expert witnesses, both of the highest standing, my leader the others. One I will call Mr. Milbank, the other Mr. Bankside. The price put by these witnesses was a fair one, though high. Counsel asked Milbank whether he could sell the property at the price at which he valued it. The answer was unexpected. “Yes, I could sell it *to-day* at the price. *I would buy it myself.*” Counsel absolutely missed the point, and was afraid to further question. On calling Mr. Bankside, instead of taking him through his proof, I merely asked him whether he agreed with Mr. Milbank, and he answered, “Yes, in every particular.” Counsel, with an air of levity, said, “Perhaps you *also* would like to buy the property at the price?” The answer was “Yes.” Both of these men were financially able to pay the many thousands they were prepared to give there and *then*. The italicised *then* tells the tale of the counsel’s failure to see the point. I make a shrewd guess what it was. Of course we got a good award from the jury. Both these men had spoken truthfully, but they had sworn by the card. The value of a property thus taken has to be assessed at the price it is worth *at the time the notice to take is given*, and the enhanced value by reason of the improvement is not to be taken into account

The surveyors were willing to buy, on *the day* of the inquiry when the site alone—*by reason* of the improvements in progress—exceeded the price they were willing to give. I do not think we got more than we ought to have done, and the valuation was certainly the price assessed, without enhancement, and not excessive.

I have left a great deal unsaid as to the art of examination. I have presented the elements. Each occasion for the exercise of it may offer new features. In some cases, you may occasionally find it desirable to be delightfully civil, in others to be conversely rude—sometimes remorseless, at other times sympathetic (really or seemingly)—you may be full of tricks and up to tricks ; gay if you can be, courageous always. You must be somewhat *Tartuffian*. You shrink from this. “You invite me to be a hypocrite?” say you. Answer, “Yes”—qualification, not in its offensive sense. If you have any compunction, try a curacy. You must dissimulate and yet need not deceive; you assume a confidence you do not possess, a gaiety which is false, a solemnity to which you are a stranger—but I need not catalogue the instances in which your mind is not an open page. You certainly will not wear your heart upon your sleeve for daws to peck at.

From a judge of serious mind you will hide your fund of humour; *aliter* with a judge of a jocular vein, with this warning, never let your jokes cap his ; you must play second fiddle—if you do not, woe betide you !

To have the last word, save that of the judge, is undoubtedly an advantage. If you appear for plaintiff, as a rule you get it, but the onus of proof may be shifted, and there may be a squabble. But you are for defendant—you find your opponent’s case weak ; by cross-examination you shake his evidence, both judge and jury seem ripe for you, and you elect not to call witnesses ; you get the last speech—that is, if you have not given any evidence. It is a risk very often worth the running, especially if your own witnesses are not over-strong. Mr. Justice Day when at the Bar often took the risk, sometimes a perilous risk, but then he

was a long-headed man and very clear-sighted. He had thus one advantage over his adversary—had heard his evidence, whereas the other was fuming and fussing because he had lost the cross-examination on which he relied, perhaps, to win his case; but sometimes even Day was too reckless, and lost cases which evidence would have enabled him to win. You are taking a great responsibility. If you do take it, you had better sound your client first; probably he will agree with you, but if he does not, call away. Take care you do not make a mistake, there is plenty of evidence besides that of witnesses. You may have inadvertently put in a letter. Your horror will be great when, having announced your intention not to call evidence, from which election you cannot retire, your friend forces you to go on. You can imagine the rage of your client.

In the course of your cases you *must* lose some which you were confident of winning. Generally there has been a surprise. You can seldom get a new trial on that ground. You may lose cases which you know have been lost through some fault of your own. Such misadventure sometimes causes to a sensitive counsel almost agonised feelings and hateful insomnia. Take courage—*humanum est errare*. There has been no gross negligence on your behalf; perhaps only a want of judgment. Do not take failure too much to heart. I fear you will become callous enough in time.

Even judges cannot always be right. Take the case of the unfortunate who has got as far as the Court of Appeal. He has been ruined by litigation. The Appellate Court has decided against him. He has not a penny with which to go to the House of Lords, and will not go as a pauper. He is absolutely ruined, and his poor people suffer with him. Possibly he puts an end to his miserable existence. I was interested in a case where a man committed suicide after the Appellate Court had decided against him. The decision in that case was a right one, and affirmed in the ultimate court. But in the not supposititious case I am referring to, years afterwards the same point arises in another case. The judge who hears such cases is bound by the decision of the

Appellate Court, but the litigant gets to the Lords, who reverse the decision. You do not imagine that the judges who went wrong are swayed by remorse.

Remember, further, that you cannot always be on the winning side. Do not be dismayed by defeat. I am addressing myself to young counsel. No doubt when you run through your case of the day you will criticise yourself. Quite right. You will think, whether winner or loser, of the bright things you might have said and did not say—of *l'esprit de l'escalier*. Perhaps it has been necessary for you to cause pain by questions which it was repugnant to you to put. Do not be uncomfortable; it was your duty. You must have your trials, and many of them—they will do you good.

There is one matter which will frequently be put to you on election—that is, where the jury do *not* agree and counsel are asked whether they will accept the verdict of the majority. As a rule, if you have a leader, and he cannot be communicated with, always refuse. If you are alone, and your opponent consents, be careful. A new trial may be better for you, as to which, *of course*, you will not be influenced by the prospect of a new brief and further fees.

In the progress of a case always keep your temper. You will have plenty to try it. An old friend of mine, Winch, of the South-Eastern, who as a Q.C. died before he could make his mark as a silk, used to say to me, “*Sit tight, my boy! sit tight!*” Admirable advice! If you lose your temper you may lose your head. I have known instances of this both in the inner as well as the outer Bar, and I am ashamed to say I have seen wicked counsel provoke an adversary whose temper was known to be easily kindled. To be angry, to show your anger, your righteous indignation, is not to lose your temper. Anger is a good weapon, even when only simulated. To be cross about trifles is absurd. You will meet men who will try to sting you, taunt you, ridicule you, be rude, and even impertinent. Meet their thrusts by fair parry, show your withering contempt for your rival's opinions, meet his rudeness with sarcasm, his impertinence with dignity, but do not be trifled with. Never *tu quoque*. Greek scolds are not fit for our arena.

CHAPTER XXVII

THE JURY

MR. JUNIOR, in offering you, a young member of the Bar, my views as to the management of a jury, I may be permitted, in the interest of my general reader, to occasionally refer to other matters seemingly not pertinent to the main point. In all probability most of your early instructions will arise out of jury cases. Your cases before a judge will require very different handling, especially in the Commercial Courts. I am old-fashioned enough to believe that trial by jury is the best tribunal our country has been able to invent. I nevertheless think it is open to serious discussion as to whether the services of the *Grand Jury* might not well be dispensed with, although "there have been grand jurymen since Noah was a sailor." You may, and no doubt will, occasionally hold criminal briefs. The object of the grand jury is, as you are aware, to decide whether there is a case to go to the jury; in fact, to usurp the privilege of the judge, whose duty it is to decide whether there is evidence or not. In almost all instances the jury arrive at the same conclusion as the magistrate, or bench of magistrates, who have committed the prisoner. If a Stipendiary has committed—there has been a patient, not hurried inquiry. Stipendiaries are most careful, and the present Bench able and painstaking; they are thoroughly fit for the business in hand. The Stipendiary will always hesitate to commit where there is only a scintilla of evidence to justify a committal. It would be interesting to know how many bills are thrown out at the Central Criminal Court yearly, and whether, in regard to the

number of bills found, the game is worth the expensive candle—very few. The grand jury cursorily try the cases.

They commence their work by listening to the judge's charge. The judge, in order to so charge, has had to fit himself for the office by perusing the depositions of the evidence taken at the committing court. He has had frequently in civil matters to withdraw cases from the jury—also in criminal proceedings. He is an expert. Not only is the grand jury a most costly institution, for which the county has to pay, but individuals are put to great expense, as also the jurymen themselves.

During these preliminary inquiries there is the loss of the judge's time, the time of many officials—solicitors, witnesses, police, and others—all to be paid for by the county; add to this the delay of business generally—courts waiting for true bills. The great grievance is the large number of grand jurymen who have to be summoned, and who may not have to serve—taken away from their avocations, to their great loss and inconvenience.

Returning to the civil courts. We have for choice the special jury or the common jury. Your client possibly, by his client's desire, or maybe by your suggestion, has set down his case to be tried by a special jury. I doubt whether he always gets his money for it. There was a time when the special jury panel was what it professed to be—drawn from men of a higher intelligence and standard than the ordinary common jurymen; but an alteration came, certainly not an improvement. Now a common jury at the Mayor's Court is frequently far above some of the specials at Westminster. I have seen men at the latter court who seemed to have got into the box by misadventure. Surely it should be arranged that if the litigant pays for special intelligence he should get it. It is also somewhat curious that many men are never called upon to serve; this looks like abuse—somewhere.

Pardon me, Mr. Junior, for this digression.

Criminal cases can only be tried by common juries, unless removed by certiorari to the King's Bench division, but at "Nisi Prius" they will equally afford you

opportunity for thought and study. You may fancy that your intelligence may help you to master a common jury of low intelligence, and that with a special jury it will be simply intellect pitted against intellect—but common jurymen are often very obstinate and lean to their class, sometimes unduly.

Whether special or common seems immaterial—your management of either will practically be the same. Your object will be to convince them—you must first please them; if you do not please them, you lose your best chance of convincing them. Of the twelve men you address many may have different minds—it is your duty to bring them to one mind. But, you will say, how can I possibly differentiate? there is no telepathic machine—at least not at present. Truly the task is difficult, and of necessity you must often fail—the clasp to the closed book is locked, but from the moment the case is opened, *keep your eye on the jurymen*. Study their moods and manners as the case progresses without neglecting it. You can divide your men first into three classes—those who are interested, those who are not, and those who are apathetic. You must be a disciple of Lavater—read his books, they will help your own discernment. As to those who are interested, you have to make up your mind whether that is mere general interest or particular interest in favour of one side or the other. It is while your adversary is working that you have the opportunity of *watching* the effect of his examination.

By intuition almost you learn whether your men are in your favour or not; if they seem so, all right; if not, you will have to work them for all they are worth. Then you have to play your second squad; the third you need not trouble about. Your policy may be to laugh the case out of court, but you may have a jury who seem to think levity out of place. Although they may be amused by the quips—you make no way. In such case you may have to hark back a bit and make them understand that you have not been actuated by mere ill-natured sarcasm. But your four men may be divided in opinion—you are able to guess

pretty well those who are wobbling or in your favour. You will find it useful to pick out the man who *seems* to be in your favour. He is somewhat flattered. The jury do not know you are addressing him—he knows. When you have caught him, cast another fly and angle. Lord Abinger when at the Bar—and he was a great verdict winner—“thought his success was mainly owing to his habit of seldom addressing the jury collectively, but of selecting one or two of them, generally one, and by no means the foreman, with whom he reasoned on the subject as best he could, placing himself, as it were, in mental communication with him, and going on until he appeared to have convinced him.” In the jury room, if the jury retire, you will have at least one strong advocate in your favour—and jurymen are very like sheep, they follow their leader. Of course you have chosen an intelligent man.

Let me refer to a few typical jurymen who want management. The foreman is possibly impressed by the fact that he is the foreman, although he simply owes his position to the accident of entering the box first. He assumes an air of gravity; do not be misled by that—gravity was “invented to cover the defects of mind.” Next to him is a man who is very acquisitive; he wants to help you (or the contrary) and interrupts your witness by a question. The judge may interpose, but does not. This is embarrassing; it may be the question you have strictly avoided putting—the answer may go against you. If in your favour—you will encourage your jurymen with a few words of graceful appreciation—that is if your friend will let you; but if against you, you must not kick against the pricks, you must look as if you rather liked it. You must be bland to a degree. In either case you have learned the *mind* of one of the men. In going to the jury you will pay him some indirect compliment, “As one of your body so cleverly elicited,” or devote all your artillery in dislodging the, of course, erroneous conclusion which the question suggested. In complimentary comparison you may refer to the dignity of silence, though you had better adopt some other metaphor, in case your opponent should quote the only two instances in which Shakespeare thought silence

was commendable ; but beware of high flights. A third is a man who takes occasional notes. It is as well for you to watch at what points he does so. His mental weather-cock will indicate the way of the wind. You should be able to meet any difficulties he may have—and to solve them.

The fourth man will probably worry you. He appears to be entirely in your favour—laughs when you desire to provoke merriment, regards you very seriously when you are grave, and nods as if in approval of all the points you try to make—a capital fellow ; but when you find he acts in precisely the same way to your opponent, and even during the summing-up, you are not so happy, you have wasted time—he is a puff-ball. Another has a harassed look, not on account of the intricacies of the case, but the little shop from which he has been absent for days, and the loss to him, and the bills he has to meet next week. Another has been listening all day to things he probably has never heard of before, and is in a state of collapse or partial slumber. Another talks to his neighbour during evidence ; you note the sneer on his lip, or his appreciative smile, or his air of doubt, and act accordingly. Another is restless and fidgety, and the remainder apparently intelligent and sober-minded, to be treated according to their fashion. I could extend this, but I am not an essayist. I can only hope that what I have written may be of service to you and that you may soon be able to say as Montagu Williams said, "*I am by trade a reader of faces and minds.*"

I now venture to give you a few hints on "Advocacy and Oratory," the polish of your acquirements, for which I reserve the next chapter.

CHAPTER XXVIII

SOME HINTS ON ADVOCACY

THE advocate must of necessity be a good and fluent speaker ; the man whose ideas do not flow quickly, who halts in speech, can never succeed at the Bar. I therefore address myself to the student or young barrister who possesses natural gifts and is ambitious to climb the ladder of success to its topmost rung. To such a man the present time offers a fine opportunity. As an orator—a man of genius and capacity never had a better season—much better than in times gone by. Of course you cannot all become Lord Chief Justices, as I heard that great Chief, Lord Coleridge, say, addressing some students on call night, but you may have a good try. You may not obtain the coveted “cushion of the Pleas,” nor the “Woolsack” your proud mother has bespoken for you—every soldier does *not* carry the marshal's bâton in his knapsack. You may by industry and the exercise of even moderate ability obtain a good and paying practice, but you require more than mediocrity to command high rank.

Take the men of the day at the Bar. You can count your orators on one hand, and the fifth finger is but a little one. Where are your Erskines, your Broughams, your Denmans, Thesigers, and Cockburns? I advise you to read and study their speeches, if you have not done so. What wealth of words—what intellect—what power! Draw your comparison—not invidiously—you will soon see that oratory is almost moribund in the legal profession. There is plenty of eloquence, but no oratory. I am not singular in the

opinion. I crave in aid a letter from one of His Majesty's judges who wrote to me some time since: "It requires, perhaps indeed it passes, the wit of the Bench to check the oratory (?) of the Bar. *Happily this latter evil shows signs of collapse.*" This pithy remark shows weariness as to what passes current for oratory.

There are, however, many brilliant advocates, facile speakers, expert rhetoricians, masters of eloquence, sound and satirical, but with scarcely any pretensions to be called orators. Now, why is this? It may be that we live in more prosaic times, and that there is less opportunity for display—no State trials—or, our men, full of work, have not time to study; *you* have plenty, now is your chance, if you possess the gifts of advocacy and oratory, but if you have neither, shut up your chambers and become an aviator or something useful. You may say, "Can oratory be taught?" Yes, I think it may be—*aliter* with wit, no student can acquire wit!—no one can create it; there is no College of Wit—no school for it. As Cicero said, "Wit is not a thing to be learned." But oratory, if you have the seeds of it in you, may fructify, and your powers of advocacy be polished. Oratory is something more than talent, but less than genius.

First for your qualifications. You have intelligence, you are well read in all matters of contemporaneous interest, you are a fair logician. "*Sound logic is the sinew of eloquence.*" Oratory is matchless Eloquence. You have studied your Cicero and the speeches of more modern legal orators. I will assume you have had some practice in debate at college, or in a mimic parliament or debating club, like the "Hardwicke," in the Temple.¹

If you have been a votary of Thespis I shall not put that to your discredit. It will have assisted you, at least to learn rapidly by heart—this will naturally help you in set speech, which is not to be despised. I will assume, further, that you

¹ I recollect a dear friend of mine who used to gather some of his friends at St. John's Wood for debates. His name was Harmsworth. He was a very clever counsel. His sons are now known—*all over the world.*

have a quick perception—an easy flow of language ; you require all this and more to become an advocate. Passing all these as desiderata, you are simply at the beginning of your alphabet. You have much to learn. You must be lucid, clear, and simple ; you must be able to qualify your *fortiter in re* with *suaviter in modo* ; you must be void of affectation, polished, pleasing, and persuasive. Lord Chesterfield wrote : “ The business of oratory is to persuade people, and to please people is a great step to persuading them.”

“ I come not, friends, to steal away your hearts :
I am no orator, as Brutus is.”

You must be powerful. Remember always that mere “ rugged eloquence ” is not oratory. In your mint you must leave the dross behind and treasure the ore. It has been well said that oratory must be polished, like unto a gem—without polish you can have no brilliance. Preparation is that last finish, which Bulwer thought the most difficult of an orator’s accomplishment. Lord Brougham said, “ The beginning of the Art of Oratory is to acquire a habit of easy speaking, the next is the grand one—to convert the style of easy speaking into chaste eloquence. It is necessary to perfect oratory, and to the end of a man’s life he must *prepare, word for word, most of his finest passages.*”

If you rely merely on your notes or extemporaneous power, you partially fail as an orator. In Brougham’s famous speech on the trial of Queen Caroline it is known that its peroration was the outcome of weeks of preparation. To tempt you to read the masterpiece of Brougham, and in the interest of my general reader, I give you its finish. I omitted to suggest in your qualifications a knowledge of constitutional history. I need scarcely remind you that the Act sought to be passed was an Act—

“ To deprive Her Majesty Caroline Amelia Elizabeth of the Rights, Privileges, and Exemptions of Queen Consort of this Realm, and to dissolve the marriage between His Majesty and the said Caroline Amelia Elizabeth.”

If you are not familiar with the merits of the case you can read Thackeray's *Fourth George*.

"Such, my Lords," said Brougham, "is the case before you, such is the evidence in support of this measure—*evidence inadequate* to prove a debt, *impotent* to deprive of a civil right, *ridiculous* to convict of the lowest offence, *scandalous* if brought forward to support a charge of the highest nature the law knows—*monstrous* to ruin the honour and blast the name of an English queen. My Lords, I pray you to pause; I do earnestly beseech you to take heed! You are standing on the brink of a precipice. *Beware!* It will go forth your judgment, if sentence shall go against the Queen. *But* it will be the only judgment you ever pronounced which will return and bound back on those who give it. Save the country, my Lords, from the horrors of such a catastrophe. Save yourselves from this peril. *Rescue* the country of which you are the ornaments, but in which you can flourish no longer, when severed from the people, than the blossom when cut off from the roots and stem of the tree. Save that country that you may continue to adorn it. *Save the crown which is in jeopardy, the aristocracy which is shaken. Save the altar, which must stagger with the blow that rends its kindred throne.* You have said, my Lords, you have willed—the Church and the King have willed—that the Queen should be deprived of its solemn service. She has instead of that the heartfelt prayers of her people. She wants no prayers of mine, but I do here pour forth my humble supplications at the Throne of Mercy—that that mercy may be poured down upon the people in a larger measure than the merits of its rulers may deserve and that your hearts may be turned to justice."

You will notice the wonderful courage of this address—the monarch of the realm fearlessly threatened with anarchy—the Lords with their extinction.

As I am giving you a discourse on oratory it is only fair you should have some of its vivid illustrations. I therefore offer you a short specimen from the speech of Brougham's junior, Denman—bold as his leader, but perhaps more

exaggerated in style. In the course of his speech the courageous counsel alluded to rumours that—

“There are persons, and not of the lowest condition—not even excluded from your august assembly—who are industriously circulating the most odious and atrocious calumnies against *her Majesty*. Can this fact be?”—Then, fixing his eyes on the gallery and looking steadily at the Duke of Clarence (William IV.), who sat there, he proceeded: “To any man who could even be suspected of so base a practice as whispering calumnies to judges, distilling leprous venom into the ears of jurors, the Queen might well exclaim—‘*Come forth, thou slanderer, and let me see thy face! If thou wouldst equal the respectability of an Italian witness, come forth and depose in open court! As thou art, thou art worse than an Italian assassin, because while I am boldly meeting my accusers, thou art planting a dagger unseen in my bosom and converting thy poisoned stiletto into the semblance of the Sword of Justice.*’”

But these instances are of the Georgian school, and out of date. In our present peaceful home times you are not likely to have the opportunities which Brougham and Denman and their predecessors had; truly, in the Senate you may air your oratory, but remember that “the floor of the House of Commons is strewn with the wrecks of lawyers’ reputations.”

There is one thing you must always avoid—anything which may give rise to misconception; your metaphor may run away with you. There was an amusing instance in Denman’s speech. The Queen had been charged with deserting her adopted country, and passing her time in Italy with persons of inferior degree and of the crime of *lèse Majesté*—infidelity—of which latter there was no testimony save the evidence of suborned witnesses. Denman had described the Queen as “pure as unsullied snow,” but at the close of his speech he besought the House “to treat her in the spirit of Him who said ‘*Go, and sin no more.*’” No doubt he referred to the lesser charge and wished to conciliate the bishops; but he bought the epigram—

"Most gracious Queen, we thee implore
To go away and sin no more,
But if that effort be too great—
To go away, at any rate."

These men were giants. Let me come back to the pigmies—a mere figure of comparison. You are on your way to become an orator, but at present I have only dealt with you as an intellectual machine. It will, of course, be to your advantage if you have a fine presence; if you have not, make the most of your inches. Charles Kean was not a Kemble—but he could act. You should have—must have—a sonorous voice with which you can raise the tempest or modulate to melody. You can never impress with harsh, ill-modulated sound. You must never "tear a passion to tatters." You have the vocal instrument to play upon—always keep it in tune. Accustom yourself to this by private practice. Try a phrase, or a series in one key; if you are satisfied, well and good—if not, try it in another.

The art of using the voice in speech must depend, to a great extent, on your knowledge of elocution. It seems to me that this knowledge is not a special accomplishment of the English Bar; it is neglected. Many men of the day might become orators but for their ignorance of the principles of elocution. Even as advocates the study would help them. How much rhetorical perfection might be obtained by it! Perhaps I am wrong in saying rhetorical perfection. Rhetoric, it has been said, is the mere quackery of eloquence and eloquence its creature.

Become a good elocutionist. Do not imagine the art is an easy study—it is a delightful one. For a moment I will deal with inflection, either rising or falling, of which there must be at least forty variations. Try a phrase, long or short, and whether you adopt a high or low tone, or a loud or soft one, there must be an *upward* or *downward* slide. Take an instance or two, premising that the acute accent (') denotes the rising inflection and the grave accent (˘) the falling. Essay the following phrase, noting that the accentuated words are at the end of the sentence:—"Cicero concludes his celebrated

books *De Oratore* with some precepts for pronunciation and action, without which he affirms that the best orator in the world can never succeed, and an indifferent one who is master of this shall gain much 'greater' applause'."

You will frequently have numerous rising and falling inflections in a very short sentence.¹

"A brave' man struggling' in the storms' of fate'
And greatly' falling' with a falling' state'."

Test these and see if you can do better.

Then there is the application of inflection, as applied to interrogation and exclamation—there is the tone in parenthesis, echo, the monotone, accent, emphasis, the pause, the climax. An excellent old text-book on Elocution is Ewing's. My copy is dated 1847. In 1848 I, as a small boy, took a prize in elocution. A few of Ewing's rules may be useful to the general reader—every man ought to be able to read well; to do so is often a delight to others. Just a few rules:—

1. Read or speak audibly and distinctly, with a degree of deliberation suited to the subject.

2. Pause at the points a sufficient length of time, but not so long as to break that connection which one part of a sentence has to another.

3. Distinguish every accented letter or syllable by a peculiar stress of the voice.

4. Give every sentence, and member of a sentence, that inflection of voice which tends to improve the sound or the sense.

5. Every emphatical word must be marked with a force corresponding with the importance of the subject.

6. At the beginning of a subject or discourse the pitch of the voice should, in general, be low.

7. As the speaker proceeds, the tones of his voice should swell, and his animation increase with the increasing importance of his subject.

¹ Jenny Thénard, of the Comédie Française, who taught my daughters, insisted on these inflections, and used to dwell on the peculiar charm of that upward lilt in the *voix d'or* of her colleague, Sarah Bernhardt.

8. At the commencement of a new paragraph, division, or subdivision of a discourse, the voice may be lowered, and again allowed gradually to swell.

9. The speaker must adopt those tones, looks, and gestures which are most agreeable to the nature of whatever he delivers: he must "suit the action to the word, and the word to the action," always remembering that "*rightly to seem is transiently to be.*"

Any one who heard Sir Charles Russell must remember how his charming oratory was perfected by his faultless elocution.

I am fixing a high standard for you—I hope you will attain it, but your accomplishment will not be complete without "delivery." Being asked what was the first point in oratory, Demosthenes said, "*Delivery!*" What was the second, and then the third, he still said "*Delivery!*" Delivery has to be pointed by *action*, without which Cicero said the best orator in the world could not succeed.

"Suit the action to the word, the word to the action, with the special observance that you overstep not the modesty of Nature!"

Action may very well be practised—even before a glass, if you will so condescend!¹ Always let your action be from the shoulder—a cramped elbow action is ungainly. Attitude must not be forgotten—an ungraceful attitude is a drawback; let it be always manly. The jury are looking at you, the judge's eyes are upon you. Sometimes you may be bowed down as by weight of woe. Oh, hypocrite! Yes! you must know how to pose. Blair well said, "Our looks, our gestures, interpret our ideas and emotions no less than words do." You must enlist in your service the expressive features of your countenance. Go to your glass again, and see how many different expressions you can get out of your eyes, sometimes with the aid of the brow. "The orator, whose eye flashes instantaneous fire!" Then the play of the mouth, in its many varieties—even the nose will enable you to snort with indignation. The forehead has its distinct work; it

¹ The elder Kean always recited in front of a mirror.

helps the frown, the scowl—and then, all in concert, you have incredulity, courage, appeal, scorn, approval, disgust, deference, and so forth. By all this you will gain the attention, the hearts of your audience. You will convince.

• A few other weapons and you will be armed cap-à-pie : satire, irony, raillery, sarcasm, ridicule—and for ornaments—humour and wit.

The use of satire is somewhat dangerous. The satirical stab may have venom in it, the barb may be poisoned. Be sparing of your satirical strength, if you possess it ; if used ill-naturedly Lord Chesterfield called it “a most malignant distemper.”

“Satire should, like a polished razor keen,
Wound with a touch that's scarcely felt or seen.”

If to your oratory you can add wit, you possess a wonderful combination. By wit I do not mean mere sparkle of phrase, *jeux d'esprit*, bon mots, facetiæ—all well in their way.—A man may be happy at repartee, a *farceur*, but not a wit.

Livy says :—

“Wit is the flower of imagination.”

Pope—

“True wit is Nature to advantage dressed,
What oft was thought, but not so well expressed.”

Butler says :—

“He knows what's what, and that's as high
As metaphysic wit can fly.”

And Milton :—

“Enjoy your dear wit and gay rhetoric,
That has so well been taught her dazzling fence.”

Well, Mr. Junior, I have told you what Cicero said—you cannot learn it. Throughout this book, however, I hope I have been able to give many anecdotal instances of it ; but remember, “*Brevity is the soul of wit.*”

Then you have banter ; to which I devote a short chapter.

CHAPTER XXIX

BANTER AND FLOTSAM AND JETSAM

BANTER is one of the light arms of the advocate, but must be used rather as a foil than a weapon. It has its value in lightening a case, and to brighten up the jury mind is always useful.

Mr. Hawkins was an adept at banter, though somewhat coarse. I recollect an instance. I heard him in an action brought by a young lady to recover the amount of two promissory notes given her by an elderly admirer—the defence obvious. Hawkins represented the defendant, and in cross-examination asked the fair plaintiff whether her old friend's name was Richard.

She answered "Yes, sir."

"And I think, sometimes, you affectionately called him Dick?"

"Yes, sir."

"Ah! pretty little Dickey; *you knew how to make him sing!*"

Lord Chief Justice Coleridge, when at the Bar, had a very delicate hand at banter, much more polished humour than that of Hawkins; as much would be done by look as by word. In *Saurin v. Starr*—referred to elsewhere under the head of "Judges"—there was a pleasant instance of inactive banter, and responded to by the witness in good-humoured return.

The action was brought by Miss Saurin for expelling her from the religious order she had joined, and to which she had devoted much money. Miss Kennedy, who was mistress

of the novices, had deposed that she had found Miss Saurin eating strawberries in the pantry. On this Coleridge, who then, as Attorney-General, was Sir John, questioned her.

Sir John. "Eating strawberries!"—and then, with an air of great surprise, "Really?"

Miss Kennedy. "Yes, sir."

Sir John. "*How shocking!*" as if deprecating the crime.

Witness. "It was forbidden, sir."

Sir John. "And did you *really* think there was any harm in that?"

Witness. "No, sir, not in itself, any more than there was harm in eating the apple; *but you know, sir, the mischief that came from it!*"

In the same case, both Bench and Bar enjoyed a hand at banter. The judge was Lord Chief Justice Cockburn, and one of the juniors, then beginning to make his way, was Charles Russell. One of those interludes which, though trivial, relieve the weariness of a cause, occurred, and any one entering the court might have heard a learned judge and his counsel seriously (apparently) debating as to the correct version of a nursery rhyme, without having been able, at the rising of the court, to solve the problem. The next morning, on the resumption of the case, Mr. Russell interposed, and, referring to the argument on the previous day, said (his loving domestic life was well known), "My Lord, since the adjournment I have had the opportunity of consulting certain little learned authorities, and I learn from them that the true rendering of the rhyme in dispute is—

"The king was in the counting-house
Counting out his money,
The queen was in the parlour
Eating bread and honey."

Scarlett [Lord Abinger] was a master of banter. In a case where a witness was known to be a very self-sufficient person, who used to put on a great deal of side, it was necessary to try and disconcert him. He entered the box—a well-dressed man—and gave his evidence in a somewhat supercilious manner.

Scarlett soon took the change out of him.

"Mr. John Tompkins, I believe?"

"Yes, sir."

"You are a stockbroker—eh?"

"I ham!"

Scarlett eyed him for a moment, and with a sly glance at the jury, said—

"And a very well-dressed ham, too, sir!"

Frank Lockwood's banter was excellent, and always good-humoured. I recollect him cross-examining a detective in a divorce case. The witness was dressed in well-cut broad-cloth, he was portly, a massive gold chain and seals hung from his fob; he might have passed for a country banker or solicitor of the old style.

Sir Frank (very politely). "I believe you are a member of the eminent firm of detectives, Messrs. Blater & Co.?"

Witness. "Yes, sir; I represent that firm."

Sir Frank. "And I presume, in the course of your professional duties, you have to assume many disguises?"

Witness. "Yes, sir."

Sir Frank. "*Pray may I ask you what you are disguised as now?*"

An instance of Lockwood's humour may be given in his retort to a well-known Q.C., now a judge.

The learned Counsel, an extremely serious man, had been tormented by Lockwood's frivolities in a case in which they were opposed—at last, in despair, he held up his hands in deprecation and said:

"Pray! Mr. Lockwood."

"I do," returned Lockwood with a shrug, "*but only at the proper time and place.*"

A good deal of banter goes on in one court. In an accident case, in which a flower-girl was spoken of as a "lydy" and a costermonger as a "gentleman," the judge asked me—

"What is your definition of a gentleman, Mr. Crispe?"

One has not time to think, but my answer came quickly in quotation—

"‘Honest men,’ my Lord, ‘are the gentlemen of nature.’"

The judge then said, with an approving smile—

"The only definition of a gentleman ever given in a court, that I remember, was in the case of John Thurtell, when a witness said, ‘I always thought him (Thurtell) a gentleman.’ Being asked by the judge what he meant, he replied, ‘*He kept a gig.*’"

"Ah!" I said, "my Lord, *gentility often goes on wheels.*"

This is simple banter.

In the same court, in an action I was in, brought by a barmaid against her employer for defamation of character, Lord Coleridge (Mr. Justice Coleridge), who was for the defendant—a publican—cross-examined the plaintiff as to her knowledge of what a hypocrite meant.

"Perhaps," said the counsel, "you have read of ‘*hypocrites*’ in the Bible?"

"No," answered the lady, "I have not."

"*What!*" remarked the judge, with surprise, "have you never read of the Scribes and Pharisees—and the *lawyers*?"

"*And the Publicans*, my Lord!" I ventured to chime in.

So much for banter!

FLOTSAM AND JETSAM

As a picker-up of unconsidered trifles, I add to this short chapter a few waifs and strays. I have not dealt with the "Poetry of the Bar." In Circuit archives may be found poems (?) which indicate how many a Barrister has made a mistake in becoming a disciple of Themis instead of the Muses.

The following lines decidedly show gallantry in referring to the tenure of lands:—

"Of base fees and simple fees
And all the fees-in-tail,
There's nothing can compare with thee,
Thou best of fees—fe(c)male."

In olden times the Bar thought more of the "Angel" than the woman (synonym, however), as that coin of the realm represented the lawyer's fee, which gave rise to the saying

that a Barrister was like Balaam's Ass, as he did not *speak* until he had seen the angel.

The "signs" of the Temple—the lamb and flag and the flying horse—were well versed in the *Gentleman's Magazine* in 1748 :—

"As by the Templars' holds you go,
The horse and lamb displayed
In emblematic figures show
The merits of their trade.
That clients may infer from thence
How just is their profession,
The *lamb* sets forth their *innocence*,
The *horse* their *expedition*.
Oh happy Britain ! happy isle !
Let foreign nations say,
Where you get justice without guile
And law without delay."

The answer of an unfortunate litigant implied some doubt :—

"Deluded men their holds forego,
Nor trust such cunning elves,
These artful emblems tend to show
Their *clients*, not themselves.
'Tis all a trick—these are all shams
By which they mean to cheat you,
So have a care, for you're the *Lambs*
And they the *wolves* that eat you.
Nor let the thoughts of no delay,
To these, their Courts, misguide you,
'Tis you're the showy *Horse*, and they
The *jockeys* that *will ride you*."

At a time long antecedent to the Thames Embankment, when the river could be approached by the stairs under the remarkable house arch in Essex Street, Strand, it has been related that on a client visiting his lawyers—a firm of three—he was invited in their absence to write his name in the call book ; he did more, and indited the following lines :—

"At the top of the street three lawyers reside,
At the bottom of the street three coal barges glide,
Fly, honesty, fly to some safer retreat,
For there's *craft* in the river and *craft* in the street."

Another client who paid a similar visit during the absence of the legal trio, added the following rejoinder :—

"Why should honesty fly to some safer retreat?
 There's no truth in your maxims, odd ! rot-em !
 For the lawyers are *just* at the top of the street,
 And the barges are *just* at the bottom."

Of my old friend Waddy (Samuel Danks), I omitted two anecdotes. Although frequently conducting the service in a Nonconformist chapel, and preaching to a congregation whose members, if on a jury he was addressing, always decided in his favour, he certainly never paraded his religious proclivities. Montagu Williams, in his *Leaves of a Life*, gave a story of Waddy and Lockwood which was amusing if not veracious. According to Montagu, Lockwood and a friend went to Waddy's chapel to hear him preach. Waddy in the pulpit spotted Lockwood in the gallery, whereupon he said, "We will now, my dear brethren, sing the 100th Psalm, after which our brother Lockwood *will address you in prayer.*"

Before the end of the Psalm, Lockwood had rapidly departed in peace. I saw both my friends the day of the publication of the book, and they indignantly denied the truth of the story—but the two anecdotes I now give are verified.

When young Waddy had preached his first sermon he returned to the paternal home hoping to receive his father's congratulations. At the mid-day meal there was an ominous silence. This the youngster at last broke by an appealing, "Father !"

"Yes, Samuel," said the good man thus appealed to, "I have heard your sermon—there was not much theology in it."

"No, father."

"Nor was there much divinity."

"No, father."

"Nor description of biblical character."

"No, father."

"Nor explanation of difficult problems."

"No, father."

"Not much expounding."

"No, father."

"Well, Sam, don't you think there ought to have been something in it?"

Certainly "Samuel Danks" was never an austere man, and I think he enjoyed life as much as most men. When he was Recorder of Sheffield and County Court Judge a pantomime was being played at the local theatre. He was anxious to see it, but did not want to be seen, and asked a leading solicitor how it could be managed. The solicitor said there would be no difficulty; he knew the manager, and he should have a box with a curtain which would hide him from observation. And so Waddy went to the theatre. All went well until the low comedian sang a patter song and extemporised verses with a catch of "*What do I see? What do I see?*" pointing to some well-known townsman and extemporising some good-natured banter. Waddy, tempted by the applause which greeted a particular sally, and curious to see the victim, peeped out from behind the curtain, and was immediately greeted by the words—

"What do I see? What do I see?"

A Judge in a place

Where he ought not to be!"

The house rocked with laughter. Poor Waddy the next day was much affected when he spoke to his friend, and begged the unseemly lines should not be repeated. The actor on being appealed to said, "*No! it was the best bit of gag he'd done the whole season, and he should repeat it every night even though 'Hamlet was absent.'*"

CHAPTER XXX

THE MORALITY OF ADVOCACY AND BAR ETIQUETTE

IN the remarks I have made in some previous chapters I have, perhaps too broadly, intimated that you must have powers of dissimulation—which smack of hypocrisy. Well, dissimulation and hypocrisy seem clearly inconsistent with the characteristics of a gentleman, but I do not see without *artifice* how you can succeed. You are engaged in a mimic fight, and, like the general, can best win by strategy. Of course you must not be deceitful to your opponent—he will believe all you say to him, and all you say must be true.

I can express in better words than my own my views as to the *morality of advocacy*.

“I asked Dr. Johnson,” says Boswell, “whether as a moralist he did not think that the practice of the law, in some degree, hurt the nice feeling of honesty?”

Johnson. “Why no, sir, if you act properly. You are not to deceive your clients with false representations of your opinion: you are not to tell lies to a judge.”

Boswell. “But what do you think of supporting a cause you know to be bad?”

Johnson. “Sir, you do not know it to be good or bad till the judge determines it. I have said that you are to state facts clearly; so that your thinking, or what you call knowing, a cause to be bad, must be from reasoning, must be from your supposing your arguments to be weak and inconclusive. An argument which does not convince your-

self may convince the judge to whom you urge it; and if it does convince him, why then, sir, you are wrong, and he is right. It is *his* business to judge; and you are not to be confident in your own opinion that a cause is bad, but to say all you can for your client, and *then* hear the judge's opinion."

Boswell. "But, sir, does not affecting a warmth when you have no warmth, and appearing to be clearly of one opinion, when you are in reality of another opinion—does not such dissimulation impair one's honesty? Is there not some danger that a lawyer may put on the same mask, in common life, in the intercourse with his friends?"

Johnson. "Why no, sir. Everybody knows that you are paid for affecting warmth for your client, and it is, therefore, properly no dissimulation; the moment you come from the Bar you resume your usual behaviour. Sir, a man will no more carry the artifice of the Bar into the common intercourse of society, than a man who is paid for tumbling on his hands will continue to tumble upon his hands when he should walk upon his feet."

Dr. Johnson's view seems to sum up the matter conclusively; it is in the interest of your client you have to dissemble. Lord Brougham exaggerated the duty owing to the client: "An advocate," said he, "by the sacred duty which he owes his client, knows, in the discharge of that office, but one person in the world—that client and none other. To save that client by all expedient means, to protect that client at all hazards and costs to all others, and, among others, himself, is the highest and most unquestioned of his duties, and he must not regard the alarm, the suffering, the torment, the destruction he may bring upon any other."

Sir Alexander Cockburn considered this as fighting with the arms of an assassin, and not those of a warrior, and flung the accusation at Brougham, who, although right as to the devotion an advocate should show to his client, was radically wrong as to the destruction of others to save him.

ETIQUETTE

Your own good sense and appreciation of what is right will govern your actions. You may be an offender in many ways—I speak now generally, and not to you individually. If so, a committee may be appointed by your circuit, to inquire into your conduct—or a complaint may be lodged against you with the Bar Council, or you may be brought before the Benchers of your Inn, and be disbarred. The infringement of Bar etiquette, as laid down by tradition, or rule, may involve you in trouble. Like the stockbroker, you must not advertise. A humorous instance of the breach occurred not long since. A man who had occupied some official position connected with a town borough, and thereby had become acquainted with many solicitors and lawyers, was called to the Bar, and at once sent out circulars announcing the fact, and soliciting the favour of his friends; it was unblushing—certainly bold.

The result was his Benchers passed sentence on him—he was screened, and not permitted to enter the precincts of the Inn for twelve months—a mild but salutary punishment.

The rules of etiquette, if not overstrained, are salutary. They keep the Bar clean of the trespassers who by some means have got over the fence. Some of the rules are now obligatory; they are practice rules. A counsel having accepted a general or special retainer is prohibited, except under certain conditions, from accepting a brief in the same cause from another solicitor. Where counsel has drawn the pleadings on a case, or had an interlocutory brief, he is entitled to a brief at the trial, unless in such instance he has had notice from the solicitor limiting his instructions. As to this, I have frequently had briefs delivered to me, where I found the pleadings had been drawn by another counsel. It was my invariable rule, in such cases, to see or write to such counsel, to ascertain the reason, if any, why he had been passed over, and I always returned my brief unless there were good reasons. That was in the time of the

unwritten law—the printed rule directs that the inquiry shall be now made to the solicitor. Misbehaviour on the part of counsel would no doubt warrant a solicitor in not delivering a brief. I recollect a man who lost a fine client by appearing at chambers, but whose refreshers had not been legal, but liquid assets. Counsel have now to sign personally, and not by their clerk, the list of fees on payment, and have to put a stamp on their receipt—quite an innovation, the fee being an honorarium, not recoverable at law. On taxation counsel's fees are not allowed, unless the solicitor produces the list of fees signed by counsel. This protects counsel from the nefarious client who has received the fees and not paid them over; but the rule was extended, and in drastic fashion. No counsel is permitted to give a receipt unless he is paid *in cash*.

This might well be relaxed. The solicitor may be respectable but the client poor, and not able to let him have the money to pay counsel. The object was, no doubt, to discourage speculative actions, and rightly; but there are perfectly sound cases where the plaintiff has no money.

In a case in which I was concerned, in the Divorce Court, my client, a lady, had obtained a decree absolute; the usual order had been made against the husband, as to security for the wife's costs. The money was in court. On taxation, the other side objected to counsel's fees, as no voucher was produced. The counsel's fees amounted to £150. The lady had no money. The solicitor did not like to risk his, and I could give no receipt unless the fees were paid to me in cash. An application was made to Sir Francis Jeune, and he made a special order that the money should be paid out. I do not know what is done now.

Etiquette will dodge you round many corners, and quite inadvertently you may break its canons, your only safeguard your sense of gentlemanly conduct. Etiquette is not so much strained as it was, but is still, in my view, strained too much.

On the Circuit statute book the crime of "Huggery"—a pretty word derived from hug er moreker—is still

extant.¹ The offence is penal. In an indictment it might be set out as "knowingly and wilfully by persuasion, blandishment, undue influence, or menace, fraudulently, and of malice aforethought, obtaining from one 'Craft,' an attorney, a bundle of papers tied up with red tape, to wit," &c.

For the general reader I may say that in the good old coaching days barristers were compelled to travel post, so as to avoid the temptation of meeting an attorney in the four-in-hand. To dance with an attorney's daughter at a county ball was not permitted to the amorous briefless one, even at a garden party, a harmless game of croquet, or whatever the game was then, was not permissible. The seniors had to have their own private lodgings, the juniors their special Bar Inn. No attorneys admitted except on business. Even now it is considered *infra dig.* to travel by train other than first class on circuit, and even then herded together. If a solicitor should by accident enter the carriage he would be looked upon as "Asmodeus" even by the "Devil's Own." Things are better now, but it is not long since on assize I saw a barrister, whom I knew was not a "Midas," leaving a third-class carriage at the tail of the train and covertly looking out so that he should not be detected. He saw me, to his horror, and came up making an excuse. I told him he was a "damn fool," put his arm in mine, and we walked up the platform together.

I recollect *I* was once in peril. I had spoken to a witness on the other side during the luncheon adjournment. Flagrant as my offence was, it was done openly—I was seen sitting down beside the witness in the corridor. The gravamen of the offence was that some evidence was wanted as to the statement of a witness who had just left the box. When I got back to court the barrister opposed to me rose with great solemnity, and complained of my conduct to the judge. The judge looked as if he could not believe his ears. The

¹ "The practice of courting an attorney with the view of obtaining professional employment." Lord Campbell wrote of circuit, "We lived together very happily, notwithstanding a few jealousies and rumours of huggery."

young counsel, the facetious ones, regarded me jeeringly, and the public seemed delighted. I was called upon for an explanation. Happily it was simple. Returning from lunch I saw my client sitting down with another man. As I was passing, my client said, "Mr. Crispe, this gentleman can give the information we want." I inquired who the gentleman was, and he told me he was Mr. Smith, whom he had subpoenaed after my brief was delivered. He had been subpoenaed on both sides, and was as much my witness as *that of my friend*. This explanation satisfied the judge, and I left the court without a stain upon my character.

If you are in any difficulty remember that the Attorney-General, for the time being, is the head of the Bar. On any point of etiquette as to which you may be doubtful he will direct you. He is the arbiter. Ask his opinion, and you will have a ready and courteous answer. I recollect having a brief sent me with a heavy fee upon it, and being doubtful whether, on a point of etiquette, I ought to accept it, I was within an ace of returning it when I happily thought of the Attorney-General, and on consulting him he decided that I was entitled to retain it.

As to circuits, when you have joined one, it is only in the first few years that you can change to another. You are bound hand and foot, and can visit no foreign circuit unless you "go special," and even then your client must brief a circuit junior. You *must* join a circuit—you *must not be a freelance*.

Apropos of etiquette, there is a tribunal before which any offences against its canons, or any act inconsistent with the conduct of a gentleman, can be tried. That tribunal is the circuit mess—the *venue* the assize town. When you have joined your circuit, and have gone the round of it, with plenty of fine old wine from the circuit cellar to cheer your heart, but not a brief to fill your pockets, you will be enlivened by the trial of sundry offenders, who, if not sentenced to social death, are chastised and their punishment commuted to a fine. This tribunal is not without its law officers; it has its Attorney-General. A night is espe-

cially devoted to these mock trials ; it gives the opportunity, as indicated, of considering any serious charge preferred by one member against another, or the complaints of any foreign circuit.

When I joined the "Old Home," "Bobby" Biron, as we called him, was our Attorney-General. He was a fellow of delightful humour. One of the most charming of men, full of wit, he finished his career as stipendiary magistrate, and his able son in like capacity keeps his memory green. I am sure Biron did not enjoy the post ; he compared it once to me to penal servitude. I met him at a dinner given by our circuit to Sir Edward Clarke, when our favourite counsel was made a law officer. On that occasion Biron was the subject of banter as to his new duties by one of the most beloved of our judges, Mr. Justice Smith (afterwards Lord Justice), familiarly known to us as "A. L." The judge greeted him, "Well, how are you, *old drunk and disorderly*?" The night charges must be a weary time to the poor "beaks."

But I have to deal with Biron as Attorney-General of the mess ; and a wonderful law officer he was. He would in that capacity represent the Crown as prosecutor. The culprit's offence was, *say*, that he had advertised himself in the public prints as a Barrister-at-Law. Imagine Biron in full swing on the heinous offence : the wretched man's life would be laid bare—he had been a drinker from his infancy—from the time of his first bottle to his last, which was on the table before him—*empty* ; he was a gambler, a frequenter of the Derby ; he had made money in partnership with a well-known "post-to-post" jockey ; he had stolen the family plate to the extent of—a fourpenny bit. He had run a career of frivolity and vice—and, given up by all other classes of men, had at last taken refuge in the *sanctuary* of the Bar. But *now*, instead of devoting the few remaining years of his miserable existence to acts of grace and contrition—he had perpetrated the enormity of "marriage," with the view of perpetuating the race of the "Devil's Own." That, however, might be forgiven—*that* would bring its own punish-

ment. One might pass over his having been married by two distinguished divines, both D.D.'s, but he had actually advertised himself in the front page of a fashionable organ as "Barrister-at-Law of the Middle Temple." Even a stock-broker would shudder at this, and consider himself worthy of being hammered. And then, the unhappy nuptials having been consummated, he had bribed the editor of a society journal to insert a column of description of the ceremony—the rank of the guests, the magnificence of their gifts, and an account of his descent from William the Conqueror, although it was well known that his great uncle was a pork butcher. Not content with that, he had obtained the insertion of a portrait of himself in his robes, which he had reproduced, and sent to every attorney in London—*without paying the postage*; and so on, but in justice to Mr. Biron I must say he was not guilty of *that* frivolous speech, though I have often heard him make a racy one.

Then the counsel appointed for the defence would go in for mitigation of damages.—"Marriage, although folly in itself, was not illegal—some people did very well without it. The prisoner wished to do without it, but the lady would not agree; besides, there might be issue, and it was not permitted for illegitimates to be called to the Bar. A declaration had to be signed that the candidate was the son of blank, and he had to add his father's profession in life—*although* he might happen to be dead at the time. The object of a barrister marrying was to produce limbs of the law. As to the advertisements and announcements, they were inserted by his mother-in-law—her first but not her only offence; her second was that she sent him in the bill. He had not paid it. His mother-in-law and himself were not on terms. The *reason* why he had not paid was not because he had not got the money, but that *he feared to create a precedent*. As to the portrait, he was about taking proceedings against the editor for criminal libel, as he was made to appear even more villainous than the murderer whose lineaments were given on the same page almost cheek by jowl. His client hoped

to uphold the dignity of the Bar and the Majesty of the Law. He desired to *rise* and beg for mercy, but from circumstances *not under his own control* he was unable to do so."

"*Verdict*: Guilty. *Sentence*: Fine, one dozen of Mumms."

Continuing the calendar.—A very common offence is where a man is indicted for having "falsely and fraudulently represented to the Lord High Chancellor, the keeper of the King's conscience, that he, the prisoner, was a man of repute and standing, learned in the law, and thereby inducing the said Chancellor to represent to His Most Gracious Majesty King Edward the Seventh that he was fit to be one of the King's Counsel—and that he succeeded," &c.

Guilty. Fine—with a caution *not to do it again*—three dozen of Sparkling. On nearly all appointments contributions to the wine fund are obtained. To become a Member of Parliament is very serious. A law officer, a recorder, a magistrate, in fact to obtain any appointment, renders the member subject to Circuit levy. It is only fair to say that the penalty is often reduced or remitted.

I speak only of my own circuit, and as I have seen but little of that for many years, there may have been alterations. I recollect I had to pay £5 when I got my promotion. I heard from the Junior that my letter accompanying it had been recorded in the archives of the circuit. It had so happened that my first case as K.C. was against the Bank of England as to some stolen notes—"Richards against the Bank of England"—*of which I suggested the note I had enclosed was one*. Sometimes these mock charges give offence. I recollect I gave some umbrage to Mr. Prentice, Q.C.—a dear old fellow. As Common Informer I preferred a charge against him of having broken the Lord's Day Act, inasmuch as he had chartered a carriage on the sabbath day to take him for an outing to Chelmsford. It was pleaded in mitigation that the conveyance *was merely a one-horse shay*. This was considered an aggravation, and below the dignity of one entitled to wear a full-bottomed wig. However, I withdrew the charge, as I saw Prentice

was vexed. All this may seem frivolous, but no one would desire to deprive us of the fun and gaiety of mess life on circuit.

The serious side is when a man is charged with some offence affecting his conduct as a gentleman. If the evidence is sufficient, a committee of investigation is appointed, and on the result may depend whether the culprit ceases to be a member of the circuit, and if he be so disgraced, ultimately, on report to his Benchers, he is usually disbarred—a terrible fate I am glad to say of rare occurrence.

When you are well launched and in practice as a Junior—perhaps a fashionable one, and briefs cover your table, a point will arise, perhaps not so much of etiquette, as of honourable feeling. It is one in which litigants and solicitors take a mutual interest. If you have accepted a brief, and have not been able to attend to it—should you return your fees? You clearly would not accept a brief if you knew you could not attend to it; but you possess that wonderful creation, a barrister's clerk. He is a shrewd fellow, and remembers how, when, in a moment of virtuous abnegation, you had returned a brief and a large fee, on which his own would have been a matter of pounds, the business so adjusted itself that you might have kept the brief and won a highly refreshable case. Your clerk has an optimistic conscience—he is an adept in the doctrine of chances, he accepts the brief in *Bullion v. Bag*, thinking and probably believing that you will be free. I must confess that it is hard lines, when, having returned papers from conscientious motives, you find yourself free, and perhaps in the very court where your friend Swagger is conducting the case with your brief and 100 guineas in his pocket which you might have pouched. So you get callous, and as to your clerk—you leave it to him: he finds you a capital devil, who reads your brief—the one in which you are in danger—and you thoroughly coach him. You do not turn up; the devil fights manfully, but loses the case—you would probably have lost it, but 'Maxim,' your client, is indignant, *his* client is more so, and himself in disgrace—both think they have been badly treated—that you might have

returned your brief, and enabled them to instruct another counsel as good, if not better than yourself—they think the least you can do is to return your fee.

Of course, if you have told your client that it was possible you might be absent, and he chose to take the risk, no question could arise; you may have been the victim of accident—cases run through with rapidity, one after the other, or a case is prolonged almost indefinitely. There is a difference of opinion at the Bar—none with the public—as to whether counsel who do not attend to their cases should retain or return their fees.

My own view is with the public, that as a rule, to which there may be many exceptions, counsel should return their fees, where they are not able to render their services. It seems much more consistent with the attitude of a gentleman who accepts an honorarium and is free from the risk of an action if he neglects his duty. If he were not a barrister, and were paid to do work which he neglected to do, he might be mulcted in damages.

I recollect some few years ago a very eminent firm of solicitors publishing in the papers a correspondence between them and an eminent counsel, who would not return his fees. Perhaps under special circumstances he was right. It seems to me that the question should be settled by rule. The monopolists might be affected, to the benefit of others less overwhelmed with work.

That very able body, the Bar Committee, might prepare rules and regulations as they have done in other matters, for guidance and control—the approval of the Attorney-General would follow, no doubt also that of the Committee of the Incorporated Law Society. The members of the Bar Committee are men distinguished either as leaders or juniors, and those of the Incorporated Law Society are most of them of the cream of the other branch of the profession. A slur on the Bar might thus be removed.

The happy time, I trust, will come when briefs roll in, then your faithful clerk can often be on one side or the other—and will choose the side most likely to win. You have

arrived at the enviable position when your *confrères* will say, "That lucky fellow Hilary! why doesn't he take silk?" They will not be envious—the profession of the Bar is singularly free from jealousy, but—they would like to get rid of you. To their delight, the time arrives when you will send out a circular notice to all your seniors on circuit of your intention to apply to the Lord Chancellor for the honour of a silk gown—that, is to give them the opportunity of themselves applying, if so disposed.

Before you make the "*great plunge*" you will no doubt have weighed the risks. You may be an excellent junior, but not possess the qualifications for a successful leader. You will be entering into a keen and more limited sphere of competition—more, because there are fewer briefs to be delivered. Consider in the last, say, ten years how many well-known juniors who have taken silk have absolutely dropped out of the running—the business seems to have become almost a monopoly. But the book will not be quite a sealed one, as at least you will know how many of your clients are likely to follow you; you may feel you will succeed—that is half the battle. Then *plunge!*

As a stuff gownsman the prizes are not open to you unless you become Attorney-General's devil, when you may jump from the Outer Bar direct to the Bench; but this is an off-chance.

I assume you have obtained your rank—not without money down. You will find that the big wax seal in a little red box, your full-bottomed wig, with etceteras, your court and working suit and fees and stamps, will make a hole in £200.

I wish you success, Mr. Senior: "*litigious terms, fat contentions, and flowing fees.*"

CHAPTER XXXI

THE FRIPPERY OF THE BAR

IT will be conceded that the "Costume of the Bar" is no longer mere foppery. At various periods the gentle youths of the Law fought their duels within the precincts of the Temple, ogled the pretty ladies who paced the lawns where the mulberries lay thick upon the grass, and affected many varieties of dress and adornment. They twirled the moustaches and smoothed the beards the Temple barbers trimmed in Vandyke fashion, wore great breeches after the Dutch and Spanish style with lawn upon their caps, and clad in doublet and hose of harlequin colours, strutted the cloisters and courts with velvet caps on their heads—white jerkins, velvet shoes, cuffs, feathers, and ribbons, completed their gay apparel.

The Inns had to take active steps from time to time. The Inner Temple issued an order that no fellow of that house should wear his beard above three weeks' growth, on pain of a forfeit of 20s.—a heavy fine. The Middle Temple enacted repressory laws, with penalties for the first offence and expulsion from their august society for the second. And the four Inns in the time of Philip and Mary, besides limiting their finery, enacted that while in Commons none should wear Spanish cloaks, sword and buckler, or rapier—or gowns girded with a dagger on the back. Thanks to old Dugdale for the information.

Next to the sword and the scales, the present emblem of Justice is the "Wig." It is said that the judge's headgear extends back to the time of St. Augustine. As centuries

passed there were many changes: in the time of Sir John Spilman it was of brown fur; in the Stuart period a skull cap—later on a periwig. To wear a full-bottomed wig was reserved to the infamous Judge Jefferies. The wigs now worn follow the style of the period of Lord Tenterden. There can be no doubt the wearing of the wig imposes an appearance of learning, wisdom, and dignity.

Farquhar, the great playwright, says in one of his plays, *Love and a Bottle*, 1698: "A full wig is imagined to be as infallible a token of wit as the laurel." Often there is neither wit nor wisdom under the wig, but its wearing gives at all events the semblance. Then there are the other trappings—the robes; "Robes and furr'd gowns hide all," says Shakespeare. The judge in his scarlet and ermine cannot fail to impress—to appear even majestic.

Mr. Justice Phillimore, at an address given by his lordship to an audience of ladies at York, appeared in scarlet and ermine and with full-bottomed wig—somewhat to the amazement, but certainly to the delight of his auditors. "Judges' robes," he said, with solemnity, "are never worn for the sake of dressing up, but to impress both themselves and others with the awe and majesty of the Law," and then followed an admirable discourse—"Such virtue is there in a robe and gown." I fear, however, if I gave my lecture on the *Wit and Oratory of Bench and Bar*, in my full-bottomed wig and silk gown, my braided coat and waistcoat, knee breeches, silk stockings and steel-buckled shoes, I should be disbarred, but judges are privileged.

I should be sorry to see the wig done away with; some think the use of it should be extended. There is a moan on the magisterial bench from that pleasant writer and active stipendiary, Mr. Plowden. In his *Grain or Chaff*, he says: "I should like to see it a matter of obligation that a police magistrate should wear something to mark his judicial office—if not a wig or gown, a badge of some sort or other"; and in a later chapter: "It is almost of the essence of justice that it should at least *look* wise, and never has anything been better designed for the purpose than a

judicial wig. There is no face so wise to look upon that it may not be made to look wiser still in the framing of a wig. As his sword is to an officer, or his gaiters to a bishop, so is the wig to a judge."

Let me hope that some day Mr. Plowden will get his wig—the absence of which has not, however, affected either his wit or his judgment.

Gloves have also played their part in legal history. The "Year Book" 4 Ed. IV., 10B. enacts that on discharge of a prisoner who had neither lands nor tenements he had to pay "*les fées à la Court*" in gloves, "*et puis sans plus, il paia les fées des gloves a le court ii dozen pur les officers del court pur ceo en tout iiij et oustre iii de furred gloves pour les iii Justices la, viz., Markham Chief Justice, Yelverton, et Bigham.*"

Even now on a "Maiden Assize" the Recorder is presented with a pair of white kid gloves, and on the first day of Term the Seniors wear white gloves and shake hands with the Juniors.

I have omitted the "gear of terror"—*the black cap*—to assume which must, to a sensitive judge, be a terrible ordeal when he addresses to the shivering wretch in the dock the awful words of condemnation.

The practice rests on ancient custom and its use is unnecessary to render the sentence valid. It is a survival of the "pointed cap" worn by the Elizabethan judges over the "coif" as merely asserting supremacy and the right to be covered in the presence of the monarch. It is even now worn on the occasion of state or civic functions. It is not intended for "terror." On one occasion, when a High Sheriff drew the attention of Sir Henry Hawkins to his having omitted to assume the black cap when about to pass sentence of death, his Lordship declined to do so on the ground that he would not "terrify the poor girl who was condemned, but would be sure to be reprieved."

Surely the time has arrived when the black cap may be relegated to the Chamber of Horrors.

CHAPTER XXXII

DUM TEMPUS HABEMUS OPEREMUR BONUM

I COMMENCED this book with a little genealogy; I conclude it with some family reminiscences. When the Divorce Court was formed seven notable counsel shared the work. They were the refugees from the old "Doctors' Commons" then abolished, and were granted patents of precedence and became Q.C.'s.—Dr. Deane (father of the present judge), Drs. Swabey, Spinks, Twiss, Wambey, Middleton, and Tristram. The latter alone survives.¹ He is judge of "The Dean and Chapter of St. Paul's Court," and while other judges have the control of the living, he has control of the dead. Without his fiat, at all events in his diocese, no body can be disinterred after burial—there are, I think, some few urgency exceptions. In 1898 an order was made that all bodies buried in the City churches should be removed to some other place of sepulture. Sanitation prevailed over sentiment.

With the redisposal of one of those bodies I had something to do. It was a body without a heart. For 233 years it had been without a heart. In a vault in St. Mildred's Church, Bread Street, was found a stone sarcophagus, and on the removal of the lid a figure encased in lead—not in a coffin, but with the lead moulded to the shape of the contents. The lineaments of the face, the arms, and crossed hands, the knees and the feet were displayed. I possess a photograph of it, too gruesome to reproduce. That leaden casing contained all that was left of the great Loyalist,

¹ Dr. Tristram is the last of the Corporation, which existed for 800 years.

Sir Nicholas Crispe, knight and baronet—save his heart. These interesting remains were to be carted to Woking, and would have been had it not been for the intervention of Mr. Gery Milner-Gibson-Cullum, of Hardwick, Bury St. Edmunds, whose ancestor, Sir Thomas Cullum, first baronet, married Mary Crispe, first cousin to Sir Nicholas Crispe. An application was made to Dr. Tristram for a faculty to remove and reinter the body elsewhere. I had some communication with the genial doctor at the time. He is much to be thanked for the interest he took in the matter. In the April number of the Law Reports, 1898, a report of the steps he took, asserting his prerogative as against the power of the Home Secretary, appeared.

Dr. Tristram wrote to me: "Had not I put a stop to the churchwardens removing the remains on the authority of the Home Office instead of by Faculty, Sir Nicholas Crispe's remains would have been carted away no one knows where."

The Faculty was granted, but where was the heart? There was no difficulty in finding that. It had been a Jacobin shrine for nearly two centuries and a half, and, besides, there was the will of Sir Nicholas, of which I have a copy. It explains the mystery of the heartless body. Sir Nicholas Crispe by his will, dated February 23, 1665, directed that his executors should—

"Cause my Heart to be Imbalmed, And to be put into a small vrne made of the hardest stone and ffastened in it placed vpon a Pillor of the best and hardest Black Marble to be sett vp in Hammersmith Chappell neare my Pew the place I soe dearely loved. And I appoint my body to be put into a Leaden Coffin and laid in a vault in St. Mildred's Church in Breadstreete in London That I made for my Parentes and Posterity which Leaden Coffin I appoint to be put into a Stone Coffin to be covered with a Stone."

At Hammersmith Church, in a beautiful urn of oviform design, the heart still rests, and by lifting the lid a little something cased in lead can still be seen. On its pedestal is inscribed, "Within this urne is entombed the heart of Sir

Nicholas Crispe, Knight and Baronet, a loyal sharer in the sufferings of his late and present Majesty."

Adjacent to the urn is a fine bust of Charles I. with an inscription—

"This effigy was erected by special appointment of Sir Nicholas Crispe Knight and Baronet as a grateful commemoration of that glorious Martyr King Charles the First of blessed memory."

Miss Hartshorne in her work on *Enshrined Hearts* states that a special sum was left by Sir Nicholas for the purpose that his heart might be refreshed every year with a glass of wine, and that the ceremony was carried out for at least a century.

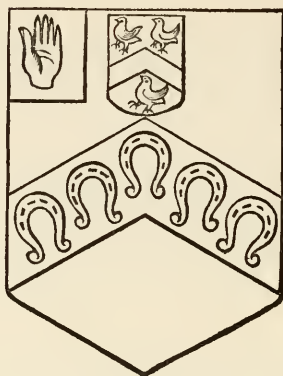
It was resolved to move the body to Hammersmith Church, and with the consent of the vicar, the Rev. John H. Snowden, and the churchwardens, Mr. Wells and Mr. Platt, the latter of whom took great interest in the proceedings, it was arranged that the reinterment should take place at St. Paul's, Hammersmith, on Saturday, June 18, 1898.

The function, which some of the Press spoke of as without precedent in the annals of history, took place on a brilliant June day. The ladies wore gala dresses, there was no sign of mourning, and the ceremony was one of gaiety. The service was choral, after which a procession to the grave was formed, the congregation going first, followed by the choir, clergy, and churchwardens; addresses by myself and others of the family were delivered, and the St. Paul's Guild of Ringers completed the function by a peal on the bells, which were presented by Sir Nicholas Crispe.

The scene at the grave was highly effective and was well depicted in the *Daily Graphic* with myself in a prominent position delivering my jeremiad. In the grave was placed a wreath of laurels by Mr. Milner-Gibson-Cullum, and a scarlet heart of flowers by my daughters.

The cover of the sarcophagus now forms the headstone with the arms and inscription as originally chiselled, which Mr. F. A. Crisp, the genealogist, carefully reproduced in the following—

*Fac-simile of Arms and Inscription on the cover of
the stone coffin.*



HERE LYETH ^EY^{TT} BODY OF ^RS^{TT} ≈
NICHOLAS CRISP K^{TT} & BARRONETT
ONE OF ^EY^{TT} FARMERS OF HIS ≈
MAJESTIES C^{TT}VSTOMES WHO
DEPARTED THIS LIFE ^EY^{TT} 27 OF
FEBRVARY 1665 ≈
AGED 67 YEARS

Among those who took a part in the function by aid or attendance, I may mention Mr. Milner-Gibson-Cullum, Sir Frank Crisp, Mr. F. A. Crisp, Mr. Crisp, High Sheriff of Cambridgeshire, the Vicar, and a contingent of Jacobites.

The name is spelt indifferently—Crisp, Crispe, Crippes, Cripps. The same arms as above, save the quartering, are up in the Middle Temple Hall—those of Mr. Cripps, who

was one of our Lectors. According to Lowther, Crisp is curt for Crispin. In one of the Pedigrees printed by the Harleian Society taken by John Philipot, Rouge Dragon, in 1619, the ancestor of the Oxfordshire branch is given as "Willielmus Cripps al's Crispe de Stanlake in County Oxon," whose son Hen. Crispe de Stanlake married "Matildis filia Joh'is Harcourt de Stanton Harcourt Armig." This Willielmus, taking the generations to the Thanet Crispes—the herald in error having skipped one—was born *circa* 1300. The intervening years from the Conquest are the most difficult for the genealogist; it is, however, more than supposition that the descent was from William Crispin, one of the three Crispins who were companions of the Conqueror and his cousins, having the same descent from Rolfe the Viking first Duke of Normandy, inasmuch as the Conqueror gave many manors in Oxfordshire to the Crispins; and the gradual corruption of the name to Crisp is indicated to demonstration in the "Great Rolls of the Pipe," Hen. II., the "Close Rolls," and the "Rolls of the Hundreds," which latter, compiled *anno* 1276, prove that the Crispes who were seated in Oxfordshire were of the family Crispins who had held lands in that county from the time of the Conquest, and whose names ceased to exist there at the end of the thirteenth century.

Sir Nicholas evidently believed in the descent from the Crispins, as he named one of his ships *The Crispin*, and on the sale of it to the Government bargained that the name should not be altered. Sir Charles Crisp, the last baronet, preferred the name in its curt form, as appears in some letters in Mr. F. A. Crisp's fourth volume of the Crispes, especially interesting from some references to the great Loyalist.

The Restoration has been attributed to a large extent to the exertions of Sir Nicholas Crispe, who spent over £100,000 in the service of his master, the martyr-king.¹ Sir Charles tells two stories of his ancestor and shows the gay second Charles under two Stuart aspects. He writes:

¹ Dr. Johnson, in his *Lives of the Poets*, attributes the "Waller Plot" to Sir Nicholas Crispe.

"This Gentleman" (Sir Nicholas) "went over a Commissioner from y^e City of London to invite the King over at the Restoration, when y^e King saw him at Breda he took him in his arms and kist him, and said shurely the City had a mind highly to Oblige me by sending over My Fathers old Friend to invite me into y^e kingdom."

This was graceful, but the other was much more Stuart. Crispe had practically ruined himself in the cause, but as he had found money for the needs of the father, so during the Commonwealth he frequently supplied the wants of the children in exile. The Stuarts had cause to be grateful to him, but they were not. He was ruined. The poor young princes and princesses must be fed, so even then they applied to him. As to this let Sir Charles tell his own tale:—

"I cannot conclude without giving you an acct how our family were used by him after he came to the Thrown, in another instance, for the money which was borrowed for his (*sic*), his Brothers & Sisters Subsistence when they went abroad, they who lent it, would not take their Security, and they could not get Security untill my Great Grandfather, S^r Nich^o Crisp, became a Counter Security. I think y^e Sum was above £3,000. My Father as succeeding his Grandfather was Sued for this Summ, Principle & interest, L. Chancelour Finch Decreed ye Debt Against him. My Father desired him to Petition and apply to the King, y^e Royall Family Subsisted on that money when they went abroad. . . . Accordingly my Father petitioned the King in Councell where there was not wanting some Noblemen who told the King they remembered it very well that he had the money. . . . The King asked what Estate my Father had, they answer'd, a very good private gentlemans Estate. The King answer'd '*Cods fish* (an Expression he used) *he is as well able to pay as I.*'"

Sir Charles adds that with interest his father had to pay between £4,000 and £5,000.

In 1643 he raised a regiment of five hundred horse at his own expense. He was nearly captured at Cirencester and

there fought a duel with a cavalier, one Sir John Enyon, whom he killed—a matter of great grief to Sir Nicholas, who annually spent the anniversary of Sir John's death in prayer and fasting. He went at the peril of his life from camp to camp disguised as a butterwoman or in other disguise, carrying despatches. He equipped fifteen ships of war, the royal fleet being then in the hands of Parliament, and maintained the king's communication with the Continent, procuring supplies of arms and ammunition. Then after the king's death came reprisals. £1,000 was placed on his head. He fled to France. £5,000 of bullion that he had in the Tower was confiscated; his stock in the Guinea Company to the extent of £16,000 was sequestered; one of his ships was captured by the Parliamentary forces, by which he lost £20,000; his house and collections of art were sold and an order made that £6,000 a year should be paid out of his and Lord Culpeper's estate—add to that about £100,000 paid direct to Charles I.—a pretty big Stuart bill considering the price of money then.¹

Of Sir Nicholas I could write reams, but will only here add that this princely merchant adventurer was a member of the East India Company, of which his father and uncle had assisted in the formation, and that he—an early Rhodes, settled the gold trade with Guinea and there built the Castle of Coromandel.

Sir Nicholas came of a Gloucestershire branch, and was no connection—save by distant affinity—of my family, the Kent Crispes. There was a contemporaneous Sir Nicholas in the Thanet family, son of Henry Crispe of Quex, which Henry also paid toll in the Stuart cause, having been abducted from his mansion of Quex when High Sheriff of Kent, and carried away to Flanders by Captain Golding, who was attached to the interests of the refugee king—a

¹ A parallel instance of patriotic consequences occurred in my wife's family, when her grandfather, the Chevalier Jens Wolff, "Conseiller d'État" of Denmark, at the time of the siege of Copenhagen, lost a large fortune in the service of his king and country, his only reward the highest order that could be conferred, that of the "Dannebrog."

ransom being demanded for his release. Sir Nicholas having died shortly after his father's abduction—his widow, Lady Thomasine, one of the great family of Deane who traced to “Alfredo de Dene, qui floruit sub Rege H. III.”—sought assistance of Cromwell, who refused aid, in the belief that the capture was a mere ruse to obtain money for the absent monarch. Eventually poor Mr. Crispe, a very old man, was released on a payment of £3,000 by his family. On his return he was known as “Bonjour Crispe,” from his frequent use of the salutation *bonjour*. He was grand-nephew of the great Sir Henry Crispe who obtained his knighthood under the sceptre of King Hen. VIII., who deputed him to receive Ann of Cleves on her way to her nuptials. This Sir Henry of Quex Park, Birchington, was known as the little “King of Thanet” and Twine, the antiquarian, in his treatise *De rebus Albionicus*, gives him the following eulogy:—

“Henricum Crispum totius insulæ Thaneti prope dixerit Regulum cujus prudentiâ in administranda Cantii Republica et maritas et Hospitalitas dum Cantium erit in memoria.”

His brother, William Crispe, Lieutenant of Dover Castle, was also a distinguished man in whom Queen Elizabeth placed great reliance as to the defence of her Kentish coast, as appears in a remarkable letter addressed to him and signed by Her Majesty (see Appendix). This was in 1571, and two years later one of my ancestors, William Crispe of Sandwich—presumably cousin of William of Dover—had the honour to receive the Queen. The account of her visit to that then important port is interesting:—

“On the occasion of Queen Elizabeth's visit to the Towne in 1573 Her Majestie went towards the Towne & Sandwich Gate, were a lyon and dragon all gilt set up upon ii posts at the Bridge end and her arms were hanged up upon the Gate. All the Towne was gravelled and strewed with rushes, herbs, flags and such like, every house having a number of greene bowes standing against the doors & walls. Her Majestie rode into the towne and in dyvers places as far as her lodgings were dyvers cordes made of vine branches with their leaves hanging cross the streetes and upon them dyvers

garlands of fyne flowers. And so she rode forthe until she came to Mr. Cripps house, where stood a fyne house newly built and vaulted over whereon her arms were set up and hanged up with Tapestry. . . ."

There are many fine portraits of the Thanet Crispes in existence—Miss Augusta Elliott, a descendant of Admiral Elliott, who married Frances Crispe in 1795, had the charge of several as heirlooms for a minor who rejoices in the name of Charles Crispe-Bowker, son of Colonel Bowker. They include fine specimens of Sir Peter Lely and other earlier artists; of these I have copies reproduced for Mr. F. A. Crisp, of "Broadhurst," Godalming, who is the fortunate possessor of a portrait of Sir Nicholas the Loyalist, an engraving of which will be found in Lyson's *Environs*. No doubt many others are scattered about in private collections.

The Thanet Crispes formed alliances with almost all the great and ancient Kentish families, of whom but few remain—among them several with the Culpepers: Henry Crispe, the son of a second Sir Henry, and Henry Crispe of St. John's, Thanet, married two sisters, the daughters of "Tho: Culpeper de Aylesford," and their children through the female side had the same strain of blood as Queens Anne Boleyn, Catherine Howard, and Elizabeth.

The arms of the Thanet Crispes are, first, Ermine a fess chequy argent and sable; second, Or on a chevron sable five horse-shoes argent—the mottoes of the families of Crispe, "*Aut non tentaris aut perfice*," and "*Dum tempus habemus operemur bonum*."

In the "Quex Chapel" of Birchington Church, Thanet, rest the remains of many of the family, to whose memory there are numerous monuments and brasses, restored by the liberality of Major Cotton-Powell, of big game fame, the owner of "Quex Park," the ancient seat of the Quex and Crispe families. I remember at one time there was some armour displayed on the walls, but there remain now but a few iron stirrups. Mr. Barrett, the archæologist, in his *Ville de Birchington*, has illustrated a few of the brasses

and monuments, including a brass of "John Quek," a maternal ancestor who died in 1449. In his book there are many interesting details, and copies of the letters of Lady Thomasine Crispe to Cromwell. Mr. F. A. Crisp includes the whole of the monuments in his fourth volume of *The Family of Crispe*.

I conclude by expressing my thanks to my Lord Chief Justice for his lordship's very kind permission to me to dedicate this book to him. I fear it is unworthy of the dedication. At the best it is but one of gossip, anecdote and incident, with, I hope, some instruction which may be useful to those to whom I have addressed a few chapters of suggestion. I should never have written it had I not been invited so to do; that is my *apologia*; but I trust sincerely that in this "Log of a Life" I have written nothing ill-natured, nothing which can wound the susceptibilities of any one. The compilation of these *Reminiscences* has given me true pleasure, but some pain. I have crossed my "sad meridian," and I feel "the very sunlight's weary, and it's time to quit the plough."

APPENDIX

THE QUEEN'S LETTER

Feb. 1. The Palace of Westminster

*Queen Elizabeth to William Crispe Esquire
Lieutenant of Dover Castle*

"WE are from time to time informed of the great disorder and spoils made by a certain flote of shippes pretending to serve the Prince of Orange in those our narrow seas and specially upon the coste of Kent and the spoiles and prices that are brought commonly into our Porte of Dover and there solde, directly against our commandments expressed by several proclamations and to the slander of that towne. Besides this we also perceive that the Conty de la Marque who also pretendyth to have authority over that Flote doth lodge in that our towne of Dover to whom also a multitude of them which serve in that flote doe resorte otherwise than in any former tyme hath been used in that towne, being a principal porte and as an eie to our realme. All which considered we will, and charge you forthwith to give knowledge to the said Conty de la Marque that although his being with us, upon his request, we were content to graunte unto him our passeport to pass out of our realme with certyne armeure belonging to himself, yet we never mente that he should contynue in that towne and principal porte to make the same as a place of assemblie of all his companie to resorte with him neither have we herde from the Prince of Orange of anie special request of his made for that purpose, but contrary-wise of late we have been advertised by our Ambassador out of Fraunce from the Conty Lodovick

brother to the said Prince that the meaninge of the said Prince is not that either the said Conty de la Marque or any other pretendynge to serve the said Prince shoulde in such sorte as they doe haunte our narrow seases, or lye in any of our portes to the offence of any of our subjects or the subjectes of any of our friends. Wherefore we shall commande him to give order that the flote may depart from our sea coste and that both himself and his traine doe depart out of that towne and porte of Dover. And if he shall refuse so to doe you shall first use some perswasion in respecte of the general complaintes of all merchauntes having cause to passe or repasse the seases by that coste and specially for that yt was never secured nor suffered that any straungers of any nation had been suffered to continue in that towne but for passage only. And if such reasons shall not move him for to yelde to depart you shall then let him understande that you may not suffer him nor any of his to remaine there. And to that ende We would have you consider how you maye if he will persist wilfully to continue—remove him thence by barring him victuals or otherwise as to yourselfe shall think beste useinge therein all directe means rather than force untill you may here farther from our Councill. We will you the Lieutenant of Dover Castell to send to the Mayor of Sandwich and all other officers of the Portes to use the same order for excludynge these manner of people. And surely if they shall not, you may well assure them without respect to their liberties they clayme we will enquire of their contempts and negligence in useing our commandments and secure our liberties into our hands.

“ELIZABETH REG.”

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